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2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Civil Action No. 16-cv-951 (LAK)

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6 DANIEL KLEEBERG, LISA STEIN and
7 AUDREY HAYS,

8 Plaintiffs,

9 -against-

10 LESTER EBER; ALEXBAY, LLC f/k/a LESTER
11 EBER, LLC; CANANDAIGUA NATIONAL
12 CORPORATION d/b/a CANANDAIGUA NATIONAL
13 BANK & TRUST; ELLIOT W. GUMAER, JR.;
14 EBER BROS. & CO., INC.; EBER BROS.
15 WINE AND LIQUOR CORPORATION; EBER
16 BROS. WINE AND LIQUOR METRO, INC.,
17 EBER-CONNECTICUT, LLC; and WENDY EBER,
18 Defendants.

19 -----x

20
21 January 24, 2019

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23 Videotaped deposition of LESTER EBER
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<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 January 24, 2019</p> <p>3 9:33 a.m.</p> <p>4</p> <p>5</p> <p>6 Videotaped deposition of LESTER EBER,</p> <p>7 held at the offices of Veritext New York City,</p> <p>8 1250 Broadway, New York, New York, pursuant to</p> <p>9 Notice, before Lynne D. Metz, a Shorthand Reporter</p> <p>10 and Notary Public of the State of New York.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 A P P E A R A N C E S: (Cont'd):</p> <p>3</p> <p>4 JOHN HERBERT, ESQ. (Telephonically)</p> <p>5 Attorneys for Defendants LESTER EBER and</p> <p>6 WENDY EBER</p> <p>7 P.O. Box 1031</p> <p>8 Tiburone, California 94920</p> <p>9</p> <p>10</p> <p>11 CALIHAN LAW PLLC</p> <p>12 Attorneys for Defendant Estate of ELLIOT W.</p> <p>13 GUMAER</p> <p>14 16 East Main Street</p> <p>15 Rochester, New York 14614</p> <p>16 BY: ROBERT B. CALIHAN, ESQ.</p> <p>17</p> <p>18</p> <p>19 ALSO PRESENT:</p> <p>20 Wayne Saline - Videographer</p> <p>21 Dan Kleeberg</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 BROOK & ASSOCIATES PLLC</p> <p>5 Attorneys for Plaintiffs</p> <p>6 100 Church Street</p> <p>7 8th Floor</p> <p>8 New York, New York 10007</p> <p>9 BY: BRIAN C. BROOK, ESQ.</p> <p>10</p> <p>11</p> <p>12 UNDERBERG & KESSLER LLP</p> <p>13 Attorneys for Defendants LESTER EBER;</p> <p>14 ALEXBAY, LLC f/k/a LESTER EBER, LLC; EBER</p> <p>15 BROS. & CO., INC.; EBER BROS. WINE AND</p> <p>16 LIQUOR CORPORATION; EBER BROS. WINE AND</p> <p>17 LIQUOR METRO, INC., EBER-CONNECTICUT, LLC;</p> <p>18 and WENDY EBER</p> <p>19 50 Fountain Plaza</p> <p>20 Buffalo, New York 14202</p> <p>21 BY: COLIN D. RAMSEY, ESQ.</p> <p>22</p> <p>23 (Appearances continued on next page)</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1</p> <p>2</p> <p>3</p> <p>4 IT IS HEREBY STIPULATED AND AGREED, by and</p> <p>5 between the attorneys for the respective parties</p> <p>6 herein, that filing and sealing be and the same</p> <p>7 are hereby waived.</p> <p>8 IT IS FURTHER STIPULATED AND AGREED</p> <p>9 that all objections, except as to the form of the</p> <p>10 question, shall be reserved to the time</p> <p>11 of the trial.</p> <p>12 IT IS FURTHER STIPULATED AND AGREED that the</p> <p>13 within deposition may be signed and sworn to</p> <p>14 before any officer authorized to administer an</p> <p>15 oath, with the same force and effect as if signed</p> <p>16 and sworn to before the officer before whom the</p> <p>17 within deposition was taken.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1</p> <p>2 THE VIDEOGRAPHER: We are going on the</p> <p>3 record at 9:33 on January 24, 2019. Please</p> <p>4 note that the microphones are sensitive and</p> <p>5 may pick up whispering and private</p> <p>6 conversations. Please turn off all cell</p> <p>7 phones and place them away from the</p> <p>8 microphones as they may interfere with the</p> <p>9 deposition audio. Recording will continue</p> <p>10 until all parties agree to go off the</p> <p>11 record.</p> <p>12 This is media unit one of the video</p> <p>13 recorded deposition of Lester Eber taken by</p> <p>14 counsel for plaintiff in the matter of Dan</p> <p>15 Kleeberg et al versus Lester Eber et al</p> <p>16 filed in the United States District Court</p> <p>17 Southern District of New York, case number</p> <p>18 16-CV-9517 (LAK). This deposition is being</p> <p>19 held at Veritext located at 1250 Broadway</p> <p>20 New York, New York.</p> <p>21 My name is Wayne Saline from the firm</p> <p>22 Veritext. I am the videographer. The court</p> <p>23 reporter is Lynne Metz from the firm</p> <p>24 Veritext.</p> <p>25 At this time the attorneys will</p>	<p style="text-align: right;">Page 8</p> <p>1 L. Eber</p> <p>2 Q. Just because no matter how many times</p> <p>3 you do this it is worth going over it again. I</p> <p>4 will go over some of the differences between</p> <p>5 today's deposition and a typical conversation to</p> <p>6 make sure that we are as efficient and have as</p> <p>7 clean a record as possible.</p> <p>8 One major difference is there is a</p> <p>9 court reporter writing down everything that we</p> <p>10 say. So even though there is a videographer</p> <p>11 recording it too, it is important that we do our</p> <p>12 best not to talk over each other. Even if you</p> <p>13 know where I am going with the question, please</p> <p>14 let me finish the question before you answer it.</p> <p>15 Okay?</p> <p>16 MR. RAMSEY: Yes?</p> <p>17 A. Yes.</p> <p>18 Q. And that brings me to the next point.</p> <p>19 All responses need to be verbal meaning yes or no</p> <p>20 rather than shaking your head or grunts like aha.</p> <p>21 Okay?</p> <p>22 A. Yes.</p> <p>23 Q. Another thing is that if I ask a</p> <p>24 question and you answer it, I am going to assume</p> <p>25 that you understood the question. So if there is</p>
<p style="text-align: right;">Page 7</p> <p>1 L. Eber</p> <p>2 introduce themselves and their affiliations</p> <p>3 for the record. The court reporter will</p> <p>4 swear in the witness and we can proceed.</p> <p>5 MR. BROOK: On behalf of the</p> <p>6 plaintiffs Brian Brook of Brook and</p> <p>7 Associates PLLC.</p> <p>8 MR. RAMSEY: Colin Ramsey from</p> <p>9 Underberg and Kessler on behalf of the Eber</p> <p>10 defendants.</p> <p>11 MR. CALIHAN: Robert Calihan on behalf</p> <p>12 of the Estate of Elliot Gumaer.</p> <p>13 MR. KLEEGERG: Dan Kleeberg.</p> <p>14 L E S T E R E B E R,</p> <p>15 called as a witness, having been first duly</p> <p>16 sworn by the Notary Public (Lynne D. Metz),</p> <p>17 was examined and testified as follows:</p> <p>18 EXAMINATION BY</p> <p>19 MR. BROOK:</p> <p>20 Q. Good morning Mr. Eber.</p> <p>21 Have you been deposed before?</p> <p>22 A. Yes.</p> <p>23 Q. When is the last time you were</p> <p>24 deposed?</p> <p>25 A. A couple of years ago.</p>	<p style="text-align: right;">Page 9</p> <p>1 L. Eber</p> <p>2 something in my question that you don't understand</p> <p>3 be sure to ask me to clarify my question before</p> <p>4 you answer it.</p> <p>5 Okay?</p> <p>6 A. Yes.</p> <p>7 Q. How do you feel today?</p> <p>8 A. Okay.</p> <p>9 Q. Is there any reason such as being</p> <p>10 tired, overly stressed or on prescription</p> <p>11 medications or something like that that would</p> <p>12 impair your ability to testify fully and</p> <p>13 truthfully today?</p> <p>14 A. Not that I know of.</p> <p>15 Q. What is your date of birth?</p> <p>16 A. 1/26/38.</p> <p>17 Q. And what is your home address?</p> <p>18 A. 15 Coral Way, Rochester, New York.</p> <p>19 Q. When you were last deposed, what was</p> <p>20 the legal matter that was in connection with?</p> <p>21 A. It was part of being a lobbyist for</p> <p>22 Southern Glazer Wine and Liquor.</p> <p>23 Q. And how was that part of the being a</p> <p>24 lobbyist, sir?</p> <p>25 A. It was guarding legislation that had</p>

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<p style="text-align: right;">Page 10</p> <p>1 L. Eber</p> <p>2 been passed or not passed. Legislation in the</p> <p>3 State of New York.</p> <p>4 Q. And they took your deposition for</p> <p>5 that?</p> <p>6 A. It was an investigation into</p> <p>7 legislation that was going on.</p> <p>8 Q. And have you ever been deposed before</p> <p>9 that?</p> <p>10 A. Yes.</p> <p>11 Q. When was the previous time that you</p> <p>12 had been deposed before?</p> <p>13 A. Many times. I can't remember all of</p> <p>14 them. I have had a lot of depositions.</p> <p>15 Q. Were you ever deposed in connection</p> <p>16 with a lawsuit by Harris Beach?</p> <p>17 A. No.</p> <p>18 Q. Were you ever deposed in connection</p> <p>19 with a lawsuit by PBGC?</p> <p>20 A. No.</p> <p>21 Q. What is your highest level of</p> <p>22 education that you obtained?</p> <p>23 A. College degree. BS in economics.</p> <p>24 Q. Where did you get that?</p> <p>25 A. University of Pennsylvania.</p>	<p style="text-align: right;">Page 12</p> <p>1 L. Eber</p> <p>2 passed away?</p> <p>3 A. Richard Murnighan.</p> <p>4 Q. And was there anyone else who was</p> <p>5 president between Richard Murnighan and you?</p> <p>6 A. No.</p> <p>7 Q. When did you stop being president of</p> <p>8 Eber Brothers Wine and Liquor?</p> <p>9 A. I can't remember the exact date, but</p> <p>10 it could have been 2012 or in through there. I</p> <p>11 don't have the exact dates. I would want to be</p> <p>12 specific with you.</p> <p>13 Q. But approximately 2012?</p> <p>14 A. I think.</p> <p>15 MR. RAMSEY: As long as that's your</p> <p>16 approximation, that's fine.</p> <p>17 Q. As president of Eber Brothers Wine and</p> <p>18 Liquor, what were your responsibilities?</p> <p>19 A. To basically oversee the management of</p> <p>20 the company and interact with our suppliers.</p> <p>21 Q. Were you the senior most executive</p> <p>22 officer or was there a CEO above you?</p> <p>23 A. No. I was the -- when I was president</p> <p>24 you mean?</p> <p>25 Q. Yes.</p>
<p style="text-align: right;">Page 11</p> <p>1 L. Eber</p> <p>2 Q. And was that the Wharton School?</p> <p>3 A. Yes.</p> <p>4 Q. And when did you graduate?</p> <p>5 A. '59.</p> <p>6 Q. What did you do immediately after</p> <p>7 college?</p> <p>8 A. Went to work for Eber Brothers Wine</p> <p>9 and Liquor.</p> <p>10 Q. What was your position?</p> <p>11 A. Salesman.</p> <p>12 Q. And I am not going to go through the</p> <p>13 whole history.</p> <p>14 At some point did you become president</p> <p>15 of Eber Brothers Wine and Liquor?</p> <p>16 A. Eventually.</p> <p>17 Q. When was that?</p> <p>18 A. I don't remember the exact date.</p> <p>19 Q. Was it before or after your father</p> <p>20 Allen Eber passed away?</p> <p>21 A. After he passed away.</p> <p>22 Q. And approximately, how long after?</p> <p>23 A. You know I can't remember. I just</p> <p>24 don't remember how long.</p> <p>25 Q. Who was president immediately after he</p>	<p style="text-align: right;">Page 13</p> <p>1 L. Eber</p> <p>2 A. I was the senior most officer.</p> <p>3 Q. And you mentioned that you have done</p> <p>4 some lobbying work since that, since you were</p> <p>5 president of Eber Brothers.</p> <p>6 Did you do lobbying work while you</p> <p>7 were president of Eber Brothers?</p> <p>8 A. I did governmental work.</p> <p>9 Q. What do you mean by that?</p> <p>10 A. I was very active in New York State in</p> <p>11 the legislation and with the regulatory agencies</p> <p>12 that regulate the business.</p> <p>13 Q. And how long had you been active in</p> <p>14 that kind of governmental work for?</p> <p>15 A. Forever really. I was brought up in</p> <p>16 it. Since I have been with the company.</p> <p>17 Q. And so did you attempt to get reforms</p> <p>18 made to the state liquor laws and things like</p> <p>19 that?</p> <p>20 A. Yes.</p> <p>21 Q. And were you successful in that?</p> <p>22 A. Not a lot. It's very difficult to</p> <p>23 make any kind of changes.</p> <p>24 Q. How was your compensation determined</p> <p>25 as president of Eber Brothers?</p>

<p style="text-align: right;">Page 14</p> <p>1 L. Eber</p> <p>2 A. You know I can't remember exactly. It</p> <p>3 grew over the years, but I don't think there was a</p> <p>4 specific formula or anything in it.</p> <p>5 Q. And who determined what your</p> <p>6 compensation would be?</p> <p>7 A. The people I worked for, Richard</p> <p>8 Murnighan and the financial people there.</p> <p>9 Q. And I am speaking specifically as</p> <p>10 president of Eber Brothers.</p> <p>11 So once you were president, who was it</p> <p>12 that determined what your compensation was?</p> <p>13 A. Well, I think it was, you know, myself</p> <p>14 and our CFO who was there.</p> <p>15 Q. Was there more than one CFO as your</p> <p>16 time as president?</p> <p>17 A. Yes.</p> <p>18 Q. Who were the people that were CFO</p> <p>19 during your time as president?</p> <p>20 A. Well, Elmer LeFeavre goes back with</p> <p>21 Murnighan and then Stanley Otto. Then Robert</p> <p>22 Belanti and then Ryan. You know I can't think of</p> <p>23 his first name.</p> <p>24 Q. John Ryan?</p> <p>25 A. John Ryan, yes.</p>	<p style="text-align: right;">Page 16</p> <p>1 L. Eber</p> <p>2 Liquor Corporation Bates numbered EB</p> <p>3 00001338 through 1340, marked for</p> <p>4 identification, as of this date.)</p> <p>5 Q. I am showing you what was marked as</p> <p>6 Exhibit 25. It is a document entitled Unanimous</p> <p>7 Written Consent of the Board of Directors of Eber</p> <p>8 Brothers Wine and Liquor Corporation and it is</p> <p>9 Bates numbered EB 00001338 through 1340.</p> <p>10 Do you recognize this document?</p> <p>11 A. Yes. I recognize what went on here.</p> <p>12 I am just reading it now.</p> <p>13 Q. So what went on here?</p> <p>14 MR. RAMSEY: Take your time to read it</p> <p>15 if you need to.</p> <p>16 MR. BROOK: You don't have to read the</p> <p>17 whole document. Just to get a sense of it.</p> <p>18 A. Yeah.</p> <p>19 Q. Does this document refresh your</p> <p>20 recollection as to whether or not there was any</p> <p>21 incentive or bonus compensation paid to you?</p> <p>22 A. That's the only one. It was never</p> <p>23 paid to me.</p> <p>24 Q. What do you mean by it, the 1.5</p> <p>25 million dollars?</p>
<p style="text-align: right;">Page 15</p> <p>1 L. Eber</p> <p>2 Q. And was Lisa Seminock at some point</p> <p>3 CFO?</p> <p>4 A. She could have been, yes.</p> <p>5 Q. Besides yourself and the CFO, was</p> <p>6 anyone else at Eber Brothers involved in</p> <p>7 determining your compensation as president?</p> <p>8 A. Mike Gumaer would have been aware of</p> <p>9 everything that went on.</p> <p>10 Q. Aware of it, but was he involved in</p> <p>11 determining it?</p> <p>12 A. You know I couldn't say determining</p> <p>13 it, but his input was highly valued in my salary.</p> <p>14 Q. And so as president you received a</p> <p>15 salary; correct?</p> <p>16 A. Yes.</p> <p>17 Q. Did you also receive incentive</p> <p>18 compensation like bonuses?</p> <p>19 A. I don't remember, to be honest with</p> <p>20 you.</p> <p>21 MR. BROOK: Our first exhibit of the</p> <p>22 day. Mark this Plaintiffs' 25.</p> <p>23 (Plaintiffs' Exhibit 25, a document</p> <p>24 entitled Unanimous Written Consent of the</p> <p>25 Board of Directors of Eber Brothers Wine and</p>	<p style="text-align: right;">Page 17</p> <p>1 L. Eber</p> <p>2 A. I never got that.</p> <p>3 Q. Why not?</p> <p>4 A. Money wasn't there. There wasn't any</p> <p>5 money in the company.</p> <p>6 Q. So take a look at page 3. The</p> <p>7 document, this is how it was produced in this</p> <p>8 case.</p> <p>9 Do you see that there is only two</p> <p>10 signatures present there and there is no signature</p> <p>11 for Mike Gumaer?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know whether Mike Gumaer</p> <p>14 ultimately did sign off on this?</p> <p>15 A. I don't know.</p> <p>16 Q. And if you turn to page, it is still</p> <p>17 page 3. The very top of page 3 it also provides</p> <p>18 there the resolution that "The corporation is</p> <p>19 authorized, empowered and directed to enter into a</p> <p>20 bonus plan with Lester Eber pursuant to which the</p> <p>21 corporation shall pay Lester Eber a bonus in an</p> <p>22 amount equal to one million dollars for the fiscal</p> <p>23 years ending on each of May 31, 2006, 2007, 2008,</p> <p>24 2009 and 2010 respectively provided. However,</p> <p>25 that the payment of each such bonus payment shall</p>

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<p style="text-align: right;">Page 18</p> <p>1 L. Eber</p> <p>2 be subject to and conditioned upon Lester Eber's</p> <p>3 employment by the corporation as of the end of</p> <p>4 each such fiscal year."</p> <p>5 A. Mm-hmm.</p> <p>6 Q. And then there is further resolutions.</p> <p>7 Did I read that correctly?</p> <p>8 A. Yes.</p> <p>9 Q. So that's separate from the 1.5</p> <p>10 million dollar commission for NDC that was</p> <p>11 referenced in this document; correct?</p> <p>12 A. Yes.</p> <p>13 Q. But it is your testimony that you were</p> <p>14 not paid either the commission or any of the one</p> <p>15 million dollar bonuses?</p> <p>16 A. That's correct. There was no money.</p> <p>17 MR. RAMSEY: You answered the</p> <p>18 question.</p> <p>19 Q. Whose idea was it to pay you a</p> <p>20 commission and bonuses?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 Go ahead.</p> <p>23 A. I was the one who found these people</p> <p>24 to be a partner and got them to go along with us.</p> <p>25 So they felt that it would be worthwhile and it</p>	<p style="text-align: right;">Page 20</p> <p>1 L. Eber</p> <p>2 Q. That's the National Distributing</p> <p>3 Company?</p> <p>4 A. Yes.</p> <p>5 Q. What was that company's business?</p> <p>6 A. Wine and liquor distribution in</p> <p>7 Georgia and other states.</p> <p>8 Q. What was the deal between Eber</p> <p>9 Brothers and NDC?</p> <p>10 A. They bought 50 percent of Metro.</p> <p>11 Q. So what was the business -- withdrawn.</p> <p>12 When you say Metro, are you referring</p> <p>13 to Eber Brothers Wine and Liquor Metro, Inc.?</p> <p>14 A. Yes.</p> <p>15 Q. So what was the business of Eber Metro</p> <p>16 at that time prior to the NDC deal?</p> <p>17 A. It was Paramount Brands. We bought</p> <p>18 Paramount Brands from Paramount Distillers in</p> <p>19 Cleveland, Ohio. I filed that one also so that we</p> <p>20 could enter the New York market.</p> <p>21 Q. So Paramount was a brand of alcohol?</p> <p>22 A. There were two Paramounts. There was</p> <p>23 a Paramount Distillers in Cleveland, Ohio that</p> <p>24 produced the Paramount Brand name and there was</p> <p>25 Paramount Brands who was a wholesaler in New York</p>
<p style="text-align: right;">Page 19</p> <p>1 L. Eber</p> <p>2 was the kind of money that these people were</p> <p>3 paying their top management.</p> <p>4 Q. So what do you mean, who is they?</p> <p>5 A. NDC.</p> <p>6 Q. And so my question was and I will</p> <p>7 rephrase it.</p> <p>8 Who at Eber Brothers proposed that you</p> <p>9 receive a commission and a bonus plan?</p> <p>10 A. I don't remember.</p> <p>11 Q. Did you propose that?</p> <p>12 A. I honestly don't remember. It wasn't</p> <p>13 just me, but it really didn't matter because I</p> <p>14 never was paid any of this.</p> <p>15 Q. Did you think that the compensation</p> <p>16 that was potentially going to be provided to you</p> <p>17 pursuant to these board resolutions was something</p> <p>18 that you had justifiably earned?</p> <p>19 A. Yes.</p> <p>20 MR. RAMSEY: Form.</p> <p>21 Q. Why is that?</p> <p>22 A. Because I got the deal. I got them to</p> <p>23 make the deal with us.</p> <p>24 Q. So by them you are referring to NDC?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 21</p> <p>1 L. Eber</p> <p>2 and I was the one who found them and we bought</p> <p>3 them so we can enter the New York Metro market.</p> <p>4 Q. When did you buy the Paramount</p> <p>5 distributor?</p> <p>6 A. I don't remember. It was in the</p> <p>7 nineties I believe, but I can't remember.</p> <p>8 Q. And was the Eber Metro corporate</p> <p>9 entity created for purposes of that acquisition?</p> <p>10 A. Yes.</p> <p>11 Q. How much was paid to acquire</p> <p>12 Paramount?</p> <p>13 A. I don't remember.</p> <p>14 Q. What's your best ball park</p> <p>15 recollection?</p> <p>16 A. I can't remember, but it was a good --</p> <p>17 it was reasonable I would say but I can't remember</p> <p>18 the figures, you know. It goes back how many</p> <p>19 years.</p> <p>20 Q. How successful was the Eber Brothers</p> <p>21 venture into the New York City Metropolitan</p> <p>22 distribution market?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 A. Depends on how you evaluate success.</p> <p>25 Q. Was it profitable?</p>

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<p style="text-align: right;">Page 22</p> <p>1 L. Eber</p> <p>2 A. I think it originally was profitable.</p> <p>3 Originally.</p> <p>4 Q. And then at some point it stopped</p> <p>5 being profitable?</p> <p>6 A. Yes.</p> <p>7 Q. Why was that?</p> <p>8 A. Lost lines. The major lines.</p> <p>9 Q. What caused the company to lose lines?</p> <p>10 A. That suppliers can go on a 30-day</p> <p>11 notice wherever they want.</p> <p>12 Q. And when did that occur?</p> <p>13 A. It occurred -- I don't have the exact</p> <p>14 dates on that.</p> <p>15 Q. Was it prior to the Eber Brothers</p> <p>16 acquisition of Slocum and Sons?</p> <p>17 A. Yes.</p> <p>18 Q. And was that experience with suppliers</p> <p>19 leaving on 30 days notice a reason why you wanted</p> <p>20 to enter The State of Connecticut?</p> <p>21 A. Yes. Among others, yes.</p> <p>22 Q. And how was The State of Connecticut</p> <p>23 different?</p> <p>24 A. It appears to be different but it</p> <p>25 isn't because there is franchise law but really</p>	<p style="text-align: right;">Page 24</p> <p>1 L. Eber</p> <p>2 A. Yes. You have good cause to end it</p> <p>3 but the relationship could go on and you could not</p> <p>4 do any business because they have got another</p> <p>5 wholesaler on the line or more than one. They</p> <p>6 have the right to appoint as many as they want.</p> <p>7 Q. By appoint you mean?</p> <p>8 A. Other wholesalers.</p> <p>9 Q. And specifically that's when</p> <p>10 wholesalers name a preferred distributor?</p> <p>11 A. Yes.</p> <p>12 Q. At the time that Eber Brothers</p> <p>13 acquired Slocum and Sons, how many of the Slocum</p> <p>14 and Sons brands were exclusive to Slocum and Sons</p> <p>15 in Connecticut?</p> <p>16 A. Most of them.</p> <p>17 Q. Were there any that were at that time</p> <p>18 dual?</p> <p>19 A. I just can't remember.</p> <p>20 Q. After the acquisition of Slocum and</p> <p>21 Sons, were some of the brands that had been</p> <p>22 exclusive dualled by the supplier?</p> <p>23 A. Yes.</p> <p>24 Q. What was the biggest one that was</p> <p>25 dualled?</p>
<p style="text-align: right;">Page 23</p> <p>1 L. Eber</p> <p>2 isn't a franchise law because the supplier can</p> <p>3 appoint another wholesaler and then work with the</p> <p>4 other wholesaler and eventually your business just</p> <p>5 goes away.</p> <p>6 Q. Let's step back and before getting</p> <p>7 into how it didn't work out, what do you mean by</p> <p>8 franchise law?</p> <p>9 A. Franchise law means that the supplier</p> <p>10 has a legal obligation to stay with you.</p> <p>11 Q. And under what circumstances can the</p> <p>12 supplier end its relationship with the distributor</p> <p>13 in Connecticut?</p> <p>14 A. Whatever they feel like. There aren't</p> <p>15 any circumstances. There are circumstances that</p> <p>16 you know if you don't pay your bill they can move</p> <p>17 right away, you know. That's with anyone, but</p> <p>18 there aren't any circumstances for them to leave.</p> <p>19 If they want to leave they can leave. They can go</p> <p>20 dual to start with.</p> <p>21 Q. So putting aside dualling for the</p> <p>22 moment, in order to actually terminate a</p> <p>23 relationship is this correct that in Connecticut a</p> <p>24 supplier has to have good cause to end the</p> <p>25 relationship?</p>	<p style="text-align: right;">Page 25</p> <p>1 L. Eber</p> <p>2 A. Yellow Tail.</p> <p>3 Q. What was the reason why they dualled</p> <p>4 Eber Brothers, I am sorry, Slocum and Sons?</p> <p>5 A. They didn't give any reason.</p> <p>6 Q. Did you ask?</p> <p>7 A. They just said we are going dual.</p> <p>8 Q. So you did not ask?</p> <p>9 A. Yeah, we did. The Deutsches are the</p> <p>10 importers of it. You try asking them.</p> <p>11 Q. Had Eber Brothers had a relationship</p> <p>12 with the Deutsches prior to acquiring Slocum and</p> <p>13 Sons?</p> <p>14 A. Yes.</p> <p>15 Q. Was Eber Brothers the distributor for</p> <p>16 the Deutsches in New York?</p> <p>17 A. Upstate New York.</p> <p>18 Q. And was that the case through the end</p> <p>19 of Eber Brothers operations?</p> <p>20 A. Yes.</p> <p>21 Q. When did Eber Brothers --</p> <p>22 A. You said through the end of their</p> <p>23 operations. They left before. They left us</p> <p>24 upstate before, while Eber Brothers was still in</p> <p>25 business if I remember correctly.</p>

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<p style="text-align: right;">Page 26</p> <p>1 L. Eber</p> <p>2 Q. So that was at some point before the</p> <p>3 deal was reached with Southern to wind down</p> <p>4 operations?</p> <p>5 A. Yes.</p> <p>6 Q. And did they go with Southern?</p> <p>7 A. Yes.</p> <p>8 Q. Just returning to the matter of</p> <p>9 compensation.</p> <p>10 Did you have in addition to your</p> <p>11 salary and bonuses that were not paid, was there</p> <p>12 any other form of compensation that you received</p> <p>13 from Eber Brothers as president?</p> <p>14 A. Not that I remember.</p> <p>15 Q. Did you have an expense account?</p> <p>16 A. Yes.</p> <p>17 Q. And what kinds of expenses were</p> <p>18 allowed to be put on to the expense account?</p> <p>19 A. Tasting and bars you know. Expenses</p> <p>20 in bars where you are tasting your product.</p> <p>21 Travel for business.</p> <p>22 Q. Did the Eber Brothers company have an</p> <p>23 apartment in New York City at some point?</p> <p>24 A. Eber Brothers did not have an</p> <p>25 apartment. There was an apartment with the Metro</p>	<p style="text-align: right;">Page 28</p> <p>1 L. Eber</p> <p>2 New York City?</p> <p>3 A. They could have, but I don't remember</p> <p>4 that.</p> <p>5 Q. Did you ever use that apartment?</p> <p>6 A. No.</p> <p>7 Q. Did you travel to New York City for</p> <p>8 business purposes when you were president of Eber</p> <p>9 Brothers?</p> <p>10 A. Yes.</p> <p>11 Q. Where did you typically stay when you</p> <p>12 did so?</p> <p>13 A. In New York City The Palace Hotel.</p> <p>14 Q. Did Eber Brothers provide you with a</p> <p>15 car?</p> <p>16 A. Yes.</p> <p>17 Q. What kind of car?</p> <p>18 A. Oldsmobile I think.</p> <p>19 Q. And did you have only one car?</p> <p>20 A. Yes.</p> <p>21 Q. And how long did you have that car</p> <p>22 for?</p> <p>23 A. I don't remember.</p> <p>24 Q. Prior to approximately the year 2008,</p> <p>25 was the only corporate entity that was paying your</p>
<p style="text-align: right;">Page 27</p> <p>1 L. Eber</p> <p>2 division.</p> <p>3 Q. So the Metro subsidiary had an</p> <p>4 apartment in New York?</p> <p>5 A. Yes.</p> <p>6 Q. Where was that apartment located?</p> <p>7 A. Next to the Hospital for Special</p> <p>8 Surgery.</p> <p>9 Q. So in Manhattan?</p> <p>10 A. Yeah.</p> <p>11 Q. When did it acquire that apartment?</p> <p>12 A. After they had moved down here. Come</p> <p>13 down here. I don't remember the exact date.</p> <p>14 Q. This was an apartment that was</p> <p>15 acquired by Eber Metro after Eber Metro acquired</p> <p>16 Paramount; correct?</p> <p>17 A. Yes.</p> <p>18 Q. What was the reason for the apartment</p> <p>19 being acquired?</p> <p>20 A. For people to come down here.</p> <p>21 Actually, a manager we brought down from upstate</p> <p>22 New York. So for a place for him to stay.</p> <p>23 Q. Who was that?</p> <p>24 A. Dan Park.</p> <p>25 Q. Did anyone else use the apartment in</p>	<p style="text-align: right;">Page 29</p> <p>1 L. Eber</p> <p>2 salary Eber Brothers Wine and Liquor Corp.?</p> <p>3 A. I think so. I think so. I can't give</p> <p>4 you an exact.</p> <p>5 Q. And after 2008 which corporate entity</p> <p>6 paid your salary, if any?</p> <p>7 A. Slocum paid me, paid for my salary.</p> <p>8 Q. And by Slocum you are referring to</p> <p>9 what's also called Eber Connecticut LLC?</p> <p>10 A. Yes.</p> <p>11 Q. In your position with Eber Connecticut</p> <p>12 LLC, how is that different, if at all, from when</p> <p>13 you were president of Eber Brothers in New York?</p> <p>14 A. It is a very different size company.</p> <p>15 It is a much smaller company.</p> <p>16 Q. Any other differences?</p> <p>17 A. Well, I think it was a more fine wine</p> <p>18 company than Eber Brothers was.</p> <p>19 Q. So was Eber Brothers more heavy on the</p> <p>20 spirit side?</p> <p>21 A. Yes.</p> <p>22 Q. After -- let's step back.</p> <p>23 I asked you before whether the</p> <p>24 franchise laws in Connecticut were one of the</p> <p>25 reasons you acquired Slocum in 2005.</p>

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<p style="text-align: right;">Page 30</p> <p>1 L. Eber</p> <p>2 Were there any other reasons why you</p> <p>3 acquired Slocum in 2005? And by you I mean you on</p> <p>4 behalf of Eber Brothers.</p> <p>5 A. Yes. It was a strategic. The company</p> <p>6 was doing over five hundred, six hundred million</p> <p>7 and the supplier was looking for multi-state</p> <p>8 distribution and it was next to New York. There</p> <p>9 were some lines we had in common and they had a</p> <p>10 very good import business of their own and we</p> <p>11 thought we could get involved in that direct</p> <p>12 importing.</p> <p>13 Q. How did the topic of an acquisition</p> <p>14 get broached with Slocum and Sons?</p> <p>15 A. I don't understand the question.</p> <p>16 Q. Well, how did you find Slocum and Sons</p> <p>17 as an acquisition target?</p> <p>18 A. We knew of them. Had some lines in</p> <p>19 common with them and they are very respected in</p> <p>20 the fine wine business.</p> <p>21 Q. So how did the topic of a potential</p> <p>22 acquisition get broached with Slocum and Sons?</p> <p>23 A. I don't remember.</p> <p>24 Q. Did you know the president or CEO of</p> <p>25 Slocum personally at the time?</p>	<p style="text-align: right;">Page 32</p> <p>1 L. Eber</p> <p>2 to pay 21.4 or so million dollars for Slocum and</p> <p>3 Sons?</p> <p>4 A. I did not handle that.</p> <p>5 Q. Who handled that?</p> <p>6 A. Would have been probably John Ryan and</p> <p>7 our law firm.</p> <p>8 Q. Which law firm was that?</p> <p>9 A. Harris Beach N.</p> <p>10 Q. Was there a particular lawyer who was</p> <p>11 your point of contact for that?</p> <p>12 A. Pat Dalton.</p> <p>13 Q. Had Eber Brothers retained Pat Dalton</p> <p>14 prior to that?</p> <p>15 A. Yes.</p> <p>16 Q. How long had Pat Dalton been a lawyer</p> <p>17 for Eber Brothers?</p> <p>18 A. I don't remember.</p> <p>19 Q. Was it several years before that</p> <p>20 point?</p> <p>21 A. Yes.</p> <p>22 Q. And Pat Dalton continued to provide</p> <p>23 legal services for several years after that</p> <p>24 acquisition too; correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 31</p> <p>1 L. Eber</p> <p>2 A. Yes.</p> <p>3 Q. Did you pick up the phone and call</p> <p>4 him?</p> <p>5 A. I could have. I don't remember.</p> <p>6 Q. Did you hire any third parties or</p> <p>7 brokers to assist with the acquisition?</p> <p>8 A. No.</p> <p>9 Q. Did you hire any bankers to assist</p> <p>10 with the acquisition?</p> <p>11 A. No.</p> <p>12 Q. How was the pricing for the</p> <p>13 acquisition of Slocum and Sons determined?</p> <p>14 A. I don't remember.</p> <p>15 Q. Do you remember the approximate total</p> <p>16 purchase price?</p> <p>17 A. I think I do. I think it was around</p> <p>18 20 million or something like that. It was what I</p> <p>19 read.</p> <p>20 Q. So does 21.4 million sound about</p> <p>21 right?</p> <p>22 A. It could be, yes.</p> <p>23 Q. Was that paid in cash?</p> <p>24 A. I don't know.</p> <p>25 Q. Where did Eber Brothers get the money</p>	<p style="text-align: right;">Page 33</p> <p>1 L. Eber</p> <p>2 Q. Why did the relationship between</p> <p>3 Harris Beach and Pat Dalton come to an end?</p> <p>4 MR. RAMSEY: Before you answer that,</p> <p>5 don't testify to any conversations you had</p> <p>6 with Mr. Dalton or anybody at Harris Beach.</p> <p>7 If you can answer the question without doing</p> <p>8 that, go ahead.</p> <p>9 MR. BROOK: You are not suggesting</p> <p>10 that the reasons for terminating a legal</p> <p>11 relationship --</p> <p>12 MR. RAMSEY: I am not saying that. I</p> <p>13 want to make sure he is not negating</p> <p>14 attorney/client privilege.</p> <p>15 A. Can you repeat the question?</p> <p>16 MR. BROOK: Could you please read that</p> <p>17 back?</p> <p>18 (Record read.)</p> <p>19 A. I believe it was a disagreement over</p> <p>20 legal billing.</p> <p>21 Q. And so you thought that the Harris</p> <p>22 Beach folks were billing you too much?</p> <p>23 A. Yes.</p> <p>24 Q. Was it in connection with anything</p> <p>25 specific, any particular matter?</p>

<p style="text-align: right;">Page 34</p> <p>1 L. Eber</p> <p>2 A. Yes.</p> <p>3 Q. What matter was that?</p> <p>4 A. The Wolf Concepts lawsuit.</p> <p>5 Q. Was Pat Dalton handling that?</p> <p>6 A. Yes.</p> <p>7 Q. And did you find other lawyers to</p> <p>8 replace Pat Dalton?</p> <p>9 A. Yes.</p> <p>10 Q. Which lawyers?</p> <p>11 A. I can't remember right now.</p> <p>12 Q. Was it Underberg and Kessler?</p> <p>13 A. Could have been.</p> <p>14 Q. How did you get introduced to the</p> <p>15 Underberg and Kessler firm?</p> <p>16 A. Alan Underberg and Irv Kessler, the</p> <p>17 original partners.</p> <p>18 Q. When was the first time that you or a</p> <p>19 company you controlled hired Underberg and Kessler</p> <p>20 as counsel?</p> <p>21 A. Could have been when we left Harris</p> <p>22 Beach, but I can't give you an exact date.</p> <p>23 Q. But as you sit here today you can't</p> <p>24 remember any matters that they handled for you or</p> <p>25 Eber Brothers prior to Wolf Concepts; correct?</p>	<p style="text-align: right;">Page 36</p> <p>1 L. Eber</p> <p>2 Q. I want to change topic briefly.</p> <p>3 Did Eber Brothers own any real estate?</p> <p>4 A. Yes.</p> <p>5 Q. What did it own?</p> <p>6 A. Well, it owned real estate in Monroe</p> <p>7 Avenue in Rochester. There are warehouses there.</p> <p>8 And it owned real in Buffalo warehouses there.</p> <p>9 And it owned real estate in Syracuse.</p> <p>10 Q. Did it also own, and maybe this is</p> <p>11 Monroe Avenue, headquarters and warehouse in</p> <p>12 Rochester?</p> <p>13 A. Yes. So that is the same. The</p> <p>14 warehouse was the headquarters and offices.</p> <p>15 Q. What was the address for that</p> <p>16 building?</p> <p>17 A. 3200 Monroe Avenue.</p> <p>18 Q. Was there another address that was</p> <p>19 used for official purposes for Eber Brothers?</p> <p>20 A. I don't know.</p> <p>21 Q. What happened to the real estate</p> <p>22 holdings of Eber Brothers?</p> <p>23 A. They were all sold off.</p> <p>24 Q. When was that?</p> <p>25 A. I don't have the date. I don't</p>
<p style="text-align: right;">Page 35</p> <p>1 L. Eber</p> <p>2 A. Yes.</p> <p>3 Q. Who was your primary point of contact</p> <p>4 with Underberg and Kessler?</p> <p>5 MR. RAMSEY: Form.</p> <p>6 Go ahead.</p> <p>7 A. Well, it became Paul Keneally.</p> <p>8 Q. Who was it prior to that?</p> <p>9 A. Rachel. I can't remember her last</p> <p>10 name.</p> <p>11 Q. Why did you switch from Rachel to Mr.</p> <p>12 Keneally?</p> <p>13 A. I believe she handled wealth</p> <p>14 management or trusts and estates and Paul was a</p> <p>15 litigator.</p> <p>16 Q. So the services you were looking for</p> <p>17 were litigation services?</p> <p>18 A. What we had with Harris Beach.</p> <p>19 Q. Harris Beach did litigation and</p> <p>20 corporate transaction work for Eber Brothers;</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. So was it the same lawyer Pat Dalton</p> <p>24 that handled both of those things?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 37</p> <p>1 L. Eber</p> <p>2 remember the date.</p> <p>3 Q. Were those owned by Eber Brothers Wine</p> <p>4 and Liquor Corp. or another entity?</p> <p>5 A. I don't know what entity but it was</p> <p>6 some -- one of the Eber corporations.</p> <p>7 Q. How much was the headquarters building</p> <p>8 sold for?</p> <p>9 A. I don't remember.</p> <p>10 Q. Does the number 4.15 million dollars</p> <p>11 refresh your recollection?</p> <p>12 A. It's possible.</p> <p>13 Q. What happened with the income or the</p> <p>14 proceeds -- withdrawn.</p> <p>15 What happened to the proceeds of the</p> <p>16 sale of the headquarters in Rochester?</p> <p>17 A. It went to building a consolidated</p> <p>18 warehouse for Rochester and Buffalo in one</p> <p>19 location.</p> <p>20 Q. So when was that?</p> <p>21 A. I don't remember the date.</p> <p>22 MR. BROOK: Let's mark this as</p> <p>23 Plaintiffs' Exhibit 26.</p> <p>24 (Plaintiffs' Exhibit 26, an article</p> <p>25 found online on cashilldevelopment.com,</p>

<p style="text-align: right;">Page 38</p> <p>1 L. Eber</p> <p>2 marked for identification, as of this date.)</p> <p>3 Q. I am showing you what has been marked</p> <p>4 as Plaintiffs' 26. It is an article found online</p> <p>5 on casshilldevelopment.com and a part of the first</p> <p>6 page of the exhibit handed to the witness has been</p> <p>7 highlighted.</p> <p>8 Do you see that highlighted portion?</p> <p>9 A. Yes.</p> <p>10 Q. And do you see that this article</p> <p>11 refers to Cass Hill's 4.15 million dollar purchase</p> <p>12 of the former Eber Brothers Wine and Liquor</p> <p>13 Distribution Corp. Headquarters and it says some</p> <p>14 other things about that, but do you see that part</p> <p>15 of it?</p> <p>16 A. Yes.</p> <p>17 Q. Is that consistent with your</p> <p>18 recollection of the purchase price paid for the</p> <p>19 headquarters building?</p> <p>20 A. If that's what it says that's what it</p> <p>21 is. It could be, yes.</p> <p>22 Q. And do you see the date on this</p> <p>23 article up at the top it says Sunday November 25,</p> <p>24 2007?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 40</p> <p>1 L. Eber</p> <p>2 Brothers have as of approximately November 2007?</p> <p>3 A. I don't remember.</p> <p>4 Q. When was the first time that you</p> <p>5 recall learning that Southern Wine and Spirits was</p> <p>6 interested in moving into the New York market?</p> <p>7 A. I don't remember.</p> <p>8 Q. Was it before or after you struck a</p> <p>9 deal with NDC?</p> <p>10 A. You know, I can't remember the exact</p> <p>11 date of it.</p> <p>12 Q. I am just asking not for the exact</p> <p>13 date but timing wise.</p> <p>14 Was learning about Southern's</p> <p>15 intentions to come into New York one of the</p> <p>16 reasons why you sought a partnership with NDC?</p> <p>17 A. You know, I don't remember the dates</p> <p>18 of it of what you are asking. I just don't.</p> <p>19 Q. You don't remember the sequence or</p> <p>20 order?</p> <p>21 A. Not -- yes, not the...</p> <p>22 Q. Did Southern at any point in time</p> <p>23 attempt to talk with you before it went into the</p> <p>24 New York market about its intentions and proposing</p> <p>25 a potential partnership or acquisition between</p>
<p style="text-align: right;">Page 39</p> <p>1 L. Eber</p> <p>2 Q. So is that date consistent with what</p> <p>3 you said a moment ago about using the proceeds to</p> <p>4 build out a new facility?</p> <p>5 A. No. I got confused with Monroe Avenue</p> <p>6 and this. The Monroe Avenue was sold and our</p> <p>7 property in Buffalo was sold to consolidate into</p> <p>8 this consolidated for Rochester and Buffalo and</p> <p>9 then after 2007 when we went out of business that</p> <p>10 was sold to this.</p> <p>11 Q. So what happened with the proceeds</p> <p>12 received for the 2007 sale of the former</p> <p>13 headquarters to Cass Hill?</p> <p>14 A. I don't remember. I don't know. I</p> <p>15 would imagine --</p> <p>16 MR. RAMSEY: Don't guess.</p> <p>17 Q. Based on your many years of experience</p> <p>18 with the Eber Brothers business, what is your best</p> <p>19 educated guess as to what happened with the money</p> <p>20 after it was sold?</p> <p>21 MR. RAMSEY: If you have an</p> <p>22 understanding or a reasonable approximation</p> <p>23 that's one thing. Don't guess.</p> <p>24 A. It probably went to pay down debt.</p> <p>25 Q. Approximately, how much debt did Eber</p>	<p style="text-align: right;">Page 41</p> <p>1 L. Eber</p> <p>2 Southern and Eber Brothers?</p> <p>3 A. We had some casual conversations but</p> <p>4 nothing actually formal.</p> <p>5 Q. Who participated in those</p> <p>6 conversations?</p> <p>7 A. It would be the owners of Southern,</p> <p>8 the Chaplins.</p> <p>9 Q. Did you meet with them in person?</p> <p>10 A. No.</p> <p>11 Q. Was it telephone calls?</p> <p>12 A. Telephone. Some telephone calls, yes.</p> <p>13 Q. What were the different possibilities</p> <p>14 that were discussed during those conversations?</p> <p>15 A. You know, I don't remember. It goes</p> <p>16 back to two thousand -- before 2007.</p> <p>17 Q. Did the Chaplins propose they might</p> <p>18 purchase Eber Brothers?</p> <p>19 A. They had talked about joint venture or</p> <p>20 something in New York, but nothing solid or</p> <p>21 specific.</p> <p>22 Q. So separate from a joint venture, did</p> <p>23 they also discuss the possibility of an</p> <p>24 acquisition of Eber Brothers?</p> <p>25 A. Not an acquisition. More of a joint</p>

<p style="text-align: right;">Page 42</p> <p>1 L. Eber</p> <p>2 venture.</p> <p>3 Q. What about a merger, did they discuss</p> <p>4 that?</p> <p>5 A. I don't remember, yeah.</p> <p>6 Q. So did discussions you had with them</p> <p>7 all involved some situation in which you would</p> <p>8 remain in charge of Eber Brothers; correct?</p> <p>9 A. Yes.</p> <p>10 Q. Did they float any pricing in terms of</p> <p>11 what they thought they might pay Eber Brothers for</p> <p>12 engaging in this joint venture?</p> <p>13 A. No.</p> <p>14 Q. So there was never any proposal from</p> <p>15 Southern that they would acquire Eber Brothers for</p> <p>16 an eight figure sum?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A. No. There wasn't any figure that I</p> <p>19 remember.</p> <p>20 Q. Did you ask them for any offers in</p> <p>21 terms of how much money they would pay?</p> <p>22 A. It just wasn't in the discussion.</p> <p>23 Q. Why not?</p> <p>24 A. I don't know.</p> <p>25 Q. So when they proposed a joint venture,</p>	<p style="text-align: right;">Page 44</p> <p>1 L. Eber</p> <p>2 A. I don't think they ever told them</p> <p>3 that.</p> <p>4 Q. So how did those conversations end?</p> <p>5 A. I think the joint venture was with</p> <p>6 NDC.</p> <p>7 Q. Did you prefer NDC to Southern?</p> <p>8 A. At the time we thought it was a better</p> <p>9 deal for Eber Brothers.</p> <p>10 Q. Why was that?</p> <p>11 A. We could continue managing the</p> <p>12 business and they were very interested in</p> <p>13 investing in Metropolitan New York.</p> <p>14 Q. So under the proposal by Southern you</p> <p>15 would not continue managing the business; is that</p> <p>16 correct?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A. We wouldn't manage Metropolitan New</p> <p>19 York. We might have managed upstate New York.</p> <p>20 Q. But with NDC you continued to manage</p> <p>21 both; correct?</p> <p>22 A. Yes.</p> <p>23 Q. After the discussions with Southern</p> <p>24 about a potential joint venture ended, how long</p> <p>25 was it after then before Southern started moving</p>
<p style="text-align: right;">Page 43</p> <p>1 L. Eber</p> <p>2 how did you respond to that?</p> <p>3 A. We listened to it.</p> <p>4 Q. And when you say we, who besides</p> <p>5 yourself are you including in that?</p> <p>6 A. It would be John Ryan and Harris</p> <p>7 Beach.</p> <p>8 Q. So you had lawyers involved in those</p> <p>9 discussions?</p> <p>10 A. Yes.</p> <p>11 Q. Were they on the telephone or some</p> <p>12 other way?</p> <p>13 A. Telephone.</p> <p>14 Q. Do you normally have casual</p> <p>15 conversations with lawyers on the line?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 Q. Is that a no?</p> <p>18 A. I don't remember.</p> <p>19 Q. Why did you involve the lawyers in</p> <p>20 these conversations?</p> <p>21 A. I think you should answer that one.</p> <p>22 You know, it is part of running a business.</p> <p>23 Q. After -- let's step back.</p> <p>24 Eber Brothers ultimately told Southern</p> <p>25 it was not interested in a joint venture; correct?</p>	<p style="text-align: right;">Page 45</p> <p>1 L. Eber</p> <p>2 into New York State?</p> <p>3 A. I think they were there during that</p> <p>4 time. They bought another wholesaler in</p> <p>5 Metropolitan New York.</p> <p>6 Q. What company was that?</p> <p>7 A. Premiere Beverage. Premiere out on</p> <p>8 Long Island.</p> <p>9 Q. How long after the discussions ended</p> <p>10 with Southern was it that Southern ended up hiring</p> <p>11 a number of Eber Brothers employees away?</p> <p>12 A. I don't remember the amount of time</p> <p>13 that it was.</p> <p>14 Q. Was it years later, months, weeks?</p> <p>15 A. I can't remember the exact time.</p> <p>16 Q. But you do remember that Southern</p> <p>17 ultimately at some point hired a number of Eber</p> <p>18 Brothers employees away from Eber Brothers?</p> <p>19 A. Yes.</p> <p>20 Q. Approximately, how many employees left</p> <p>21 for Southern?</p> <p>22 A. Could have been 40 or 50.</p> <p>23 Q. And out of how many?</p> <p>24 A. I couldn't give you that figure.</p> <p>25 Q. What type of employees were those that</p>

<p style="text-align: right;">Page 46</p> <p>1 L. Eber</p> <p>2 were hired?</p> <p>3 A. All types.</p> <p>4 Q. Did that include salespeople?</p> <p>5 A. Yes.</p> <p>6 Q. Did it include people that worked in</p> <p>7 the warehouse?</p> <p>8 A. Yeah, probably. I -- it could have.</p> <p>9 Q. Who was the highest level employee</p> <p>10 that you recall leaving Eber Brothers for Southern</p> <p>11 at that time?</p> <p>12 A. The manager of the upstate business.</p> <p>13 Q. Who was that?</p> <p>14 A. Dan Cisco.</p> <p>15 Q. Did he tell you why he was leaving?</p> <p>16 A. They offered him a lot of money.</p> <p>17 Q. Did he give you the opportunity to try</p> <p>18 to match that?</p> <p>19 A. No. Not that kind of money.</p> <p>20 Q. So is it fair to say Southern paid</p> <p>21 these employees more than Eber Brothers could</p> <p>22 afford to pay?</p> <p>23 A. Yes.</p> <p>24 Q. Aside from hiring a number of Eber</p> <p>25 Brothers employees, did Southern do anything else</p>	<p style="text-align: right;">Page 48</p> <p>1 L. Eber</p> <p>2 A. I don't know. I don't remember.</p> <p>3 Excuse me, I should say I don't remember.</p> <p>4 Q. How was -- other than -- let me</p> <p>5 withdraw that.</p> <p>6 How many lawsuits were there filed</p> <p>7 against Southern by Eber Brothers?</p> <p>8 A. I only remember one.</p> <p>9 Q. And other than filing a lawsuit, did</p> <p>10 you do anything to else to fight back against</p> <p>11 Southern?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. Yeah. We hired people to replace the</p> <p>14 ones that had left us and we solicited suppliers</p> <p>15 to replace the suppliers that left us.</p> <p>16 Q. And did you get any new suppliers</p> <p>17 through the --</p> <p>18 A. Yes, some.</p> <p>19 Q. Approximately, how long did your</p> <p>20 efforts to try to survive despite Southern moving</p> <p>21 into New York go on for?</p> <p>22 A. Till we closed in '07 was it.</p> <p>23 Q. How was the final -- I will withdraw.</p> <p>24 So at the end of the day Eber Brothers</p> <p>25 reached an agreement with Southern where Eber</p>
<p style="text-align: right;">Page 47</p> <p>1 L. Eber</p> <p>2 that affected Eber Brothers' ability to function</p> <p>3 as a business?</p> <p>4 A. Yes.</p> <p>5 Q. What did it do?</p> <p>6 A. Took lines away from us.</p> <p>7 Q. How many lines?</p> <p>8 A. Multiple ones. I can't remember how</p> <p>9 many wine a spirit lines.</p> <p>10 Q. Anything else that it did?</p> <p>11 A. I can't remember.</p> <p>12 Q. At some point Eber Brothers filed a</p> <p>13 lawsuit against Southern; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. What was the basis for that lawsuit?</p> <p>16 A. Putting us out of business.</p> <p>17 Q. Why did you believe that was something</p> <p>18 that was legally wrong?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 Go ahead.</p> <p>21 A. They took our employees and they took</p> <p>22 our lines. What else do we have.</p> <p>23 Q. Had there been any sort of</p> <p>24 non-disclosure or confidentiality agreements</p> <p>25 between Eber Brothers and Southern?</p>	<p style="text-align: right;">Page 49</p> <p>1 L. Eber</p> <p>2 Brothers would end its operations in New York;</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. What did Eber Brothers receive in</p> <p>6 exchange for agreeing to do that?</p> <p>7 A. Southern would take the inventories of</p> <p>8 the lines that we had, would pay for them and the</p> <p>9 suppliers would move over to them. We would get</p> <p>10 the money for the inventory.</p> <p>11 Q. And other than the inventory, was</p> <p>12 there any other sorts of payments that were made</p> <p>13 by Southern to Eber Brothers?</p> <p>14 A. Well, they had an agreement with me.</p> <p>15 They hired me.</p> <p>16 Q. Any other payments that were made?</p> <p>17 A. It's possible. I don't remember.</p> <p>18 Q. Did Southern also acquire Eber</p> <p>19 Brothers' interests in certain operations that</p> <p>20 were outside of New York State?</p> <p>21 A. Yes.</p> <p>22 Q. What were those?</p> <p>23 A. Ohio and Delaware.</p> <p>24 Q. What were the interests that Eber</p> <p>25 Brothers had in Ohio?</p>

<p style="text-align: right;">Page 50</p> <p>1 L. Eber</p> <p>2 A. They owned a brokerage company there.</p> <p>3 Q. What kind of brokerage?</p> <p>4 A. Spirit brokerage.</p> <p>5 Q. Was that a profitable company?</p> <p>6 A. Yes.</p> <p>7 Q. How much did Southern pay for that?</p> <p>8 A. I don't remember.</p> <p>9 Q. Was everything that Southern acquired</p> <p>10 part of one big deal?</p> <p>11 A. It could have been.</p> <p>12 Q. What guarantee did Southern have that</p> <p>13 after agreeing to close Eber Brothers that you and</p> <p>14 one of the remaining Eber entities wouldn't just</p> <p>15 start all over again in New York?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 A. You would have to go back to the</p> <p>18 agreement we signed with them. It's possible</p> <p>19 there that we agreed to that.</p> <p>20 Q. So you don't remember whether there</p> <p>21 were any agreements not to compete with Southern?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A. I think there could have been, but I</p> <p>24 don't remember exactly.</p> <p>25 Q. Do you recall in approximately 2008 or</p>	<p style="text-align: right;">Page 52</p> <p>1 L. Eber</p> <p>2 Q. Do you recall ever talking with Dan</p> <p>3 Kleeberg about the possible job opportunities with</p> <p>4 Southern?</p> <p>5 A. Yes.</p> <p>6 Q. When was that?</p> <p>7 A. After we shut down.</p> <p>8 Q. And at that point in time had you</p> <p>9 begun working for Southern?</p> <p>10 A. I don't remember the exact time that</p> <p>11 that would have been.</p> <p>12 Q. What was the job opportunity that you</p> <p>13 discussed with Dan?</p> <p>14 A. We are having them employ him in</p> <p>15 upstate New York or wherever.</p> <p>16 Q. Did Dan end up interviewing?</p> <p>17 A. Yes.</p> <p>18 Q. What came out of that interview?</p> <p>19 A. I wasn't there at the interview, but</p> <p>20 nothing seemed to happen there between them.</p> <p>21 Q. Did you ask anyone from Southern what</p> <p>22 happened in that meeting?</p> <p>23 A. I didn't get into it with them. You</p> <p>24 know, he just -- I asked Dan and he said either he</p> <p>25 wasn't interested or whatever with them.</p>
<p style="text-align: right;">Page 51</p> <p>1 L. Eber</p> <p>2 2009 having a conversation with your nephew Dan</p> <p>3 Kleeberg about his desire to start a wine import</p> <p>4 business in the state of Florida?</p> <p>5 A. I have seen that he said that, but I</p> <p>6 don't remember it.</p> <p>7 Q. Are you aware that he owns a company</p> <p>8 called Prestige?</p> <p>9 A. Yes.</p> <p>10 Q. And so you don't recall a conversation</p> <p>11 with Dan about another possible name he wanted to</p> <p>12 use for that business?</p> <p>13 A. No.</p> <p>14 Q. After Eber Brothers Wine and Liquor</p> <p>15 wound down, how frequently did you speak with Dan</p> <p>16 Kleeberg in the years after that?</p> <p>17 A. Consistently, a lot.</p> <p>18 Q. What do you mean by that; once a week?</p> <p>19 A. Whenever something came up that we</p> <p>20 wanted to discuss. He wanted to discuss or I did.</p> <p>21 Q. So approximately, how frequently was</p> <p>22 that?</p> <p>23 A. There was no specific frequency. It</p> <p>24 could have been every day. It could have been</p> <p>25 once a week. I don't remember.</p>	<p style="text-align: right;">Page 53</p> <p>1 L. Eber</p> <p>2 MR. BROOK: Let's take a five minute</p> <p>3 break.</p> <p>4 MR. RAMSEY: I was going to say this</p> <p>5 is a good point.</p> <p>6 THE VIDEOGRAPHER: This marks the end</p> <p>7 of media unit one in the videotaped</p> <p>8 deposition of Lester Eber. We are going off</p> <p>9 the record. The time is 10:27.</p> <p>10 (Recess taken.)</p> <p>11 THE VIDEOGRAPHER: This marks the</p> <p>12 beginning of media unit number two in the</p> <p>13 videotaped deposition of Lester Eber. We</p> <p>14 are going on the record. The time is 10:42.</p> <p>15 BY MR. BROOK:</p> <p>16 Q. I want to return to the topic of the</p> <p>17 Southern deal that was struck to end Eber Brothers</p> <p>18 operations in New York.</p> <p>19 You mentioned that there was an</p> <p>20 agreement between you and Southern for you to work</p> <p>21 for Southern as a result of that; correct?</p> <p>22 A. Yes.</p> <p>23 Q. How did the idea of you working for</p> <p>24 Southern get brought up in your negotiations with</p> <p>25 Southern?</p>

<p style="text-align: right;">Page 54</p> <p>1 L. Eber</p> <p>2 A. They said to me that, you know, you</p> <p>3 are out of business and that we could use someone</p> <p>4 to help us with government relations in the State</p> <p>5 of New York and we know your background in</p> <p>6 governmental affairs and we would like you to</p> <p>7 represent us for the State of New York in</p> <p>8 governmental relations with it.</p> <p>9 Q. Did you agree to do that?</p> <p>10 A. Yes.</p> <p>11 Q. Were there any other aspects to your</p> <p>12 agreement to work with Southern beside doing</p> <p>13 governmental relations?</p> <p>14 A. At that time it was just governmental</p> <p>15 relations.</p> <p>16 Q. At some point later -- first withdraw</p> <p>17 that question.</p> <p>18 Did you continue to provide</p> <p>19 governmental relations services for Southern</p> <p>20 continuously since the Southern deal took place in</p> <p>21 2007?</p> <p>22 A. Yes.</p> <p>23 Q. Are you still providing governmental</p> <p>24 relations services for Southern?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 56</p> <p>1 L. Eber</p> <p>2 lives under in the State of New York and it is</p> <p>3 very tight.</p> <p>4 Q. When did that consent order go in?</p> <p>5 A. '06.</p> <p>6 Q. So that was before you started working</p> <p>7 with Southern?</p> <p>8 A. Yes.</p> <p>9 Q. Did you have any involvement in --</p> <p>10 what was your involvement, if any, with the</p> <p>11 consent order that went into place?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. Eber Brothers was involved in it</p> <p>14 because we were still in business when it went in</p> <p>15 originally.</p> <p>16 Q. So was Eber Brothers a target of the</p> <p>17 Attorney General's investigation?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A. Any license in the state was.</p> <p>20 Q. And why was that?</p> <p>21 A. Who they would go to to find out what</p> <p>22 was going on or to investigate.</p> <p>23 Q. What was it in terms of wrongdoing</p> <p>24 that was being investigated?</p> <p>25 A. Illegal behavior imposed on the laws,</p>
<p style="text-align: right;">Page 55</p> <p>1 L. Eber</p> <p>2 Q. Has the governmental relations work</p> <p>3 that you have done for Southern changed at all in</p> <p>4 the years since it began?</p> <p>5 A. Yes.</p> <p>6 Q. How so?</p> <p>7 A. I handled compliance and governmental</p> <p>8 relations for the State of New York.</p> <p>9 Q. So you have taken on additional duties</p> <p>10 of handling compliance?</p> <p>11 A. Yes.</p> <p>12 Q. When did that occur?</p> <p>13 A. It was a couple of years after I had</p> <p>14 done, two or three years after I had done</p> <p>15 governmental relations, just governmental</p> <p>16 relations.</p> <p>17 Q. Did the nature of the work that you</p> <p>18 were doing on the governmental relations side</p> <p>19 change in any other way since the relationship</p> <p>20 began in 2007?</p> <p>21 A. It's become more intense. New York is</p> <p>22 a very heavily regulated state. When Elliot</p> <p>23 Spitzer was Attorney General he did an</p> <p>24 investigation of the industry and ended up with a</p> <p>25 consent order in Erie County that the industry</p>	<p style="text-align: right;">Page 57</p> <p>1 L. Eber</p> <p>2 payoffs, giving incentives to buy.</p> <p>3 Q. So by payoffs, do you mean things like</p> <p>4 kickbacks?</p> <p>5 A. Yes.</p> <p>6 Q. And what do you mean by incentives to</p> <p>7 buy?</p> <p>8 A. Free television sets or all kinds of</p> <p>9 things.</p> <p>10 Q. So not necessarily cash kickbacks but</p> <p>11 also other sorts of gifts?</p> <p>12 A. Yes.</p> <p>13 Q. Did Eber Brothers ever provide</p> <p>14 kickbacks to any of its suppliers?</p> <p>15 MR. RAMSEY: Form.</p> <p>16 A. Suppliers?</p> <p>17 Q. Yes.</p> <p>18 A. Not suppliers, no.</p> <p>19 Q. To other parties that it worked with?</p> <p>20 A. I wouldn't say kickbacks. They had</p> <p>21 situations that were not under the law that went</p> <p>22 on.</p> <p>23 Q. What was that?</p> <p>24 A. You know, television sets or gimmicks</p> <p>25 or things, incentives to buy.</p>

<p style="text-align: right;">Page 58</p> <p>1 L. Eber</p> <p>2 Q. Those were given to retailers?</p> <p>3 A. Yes.</p> <p>4 Q. Who at Eber Brothers was involved in</p> <p>5 providing television sets to --</p> <p>6 A. Sales management I would imagine.</p> <p>7 Q. Was this something that you were aware</p> <p>8 was going on?</p> <p>9 A. Yes, I was. Some of it, yes.</p> <p>10 Q. What --</p> <p>11 A. Yes.</p> <p>12 Q. What did you do about it when you</p> <p>13 learned that it was going on?</p> <p>14 A. I tried to control it the best I</p> <p>15 could, but it was a general condition in the</p> <p>16 market.</p> <p>17 Q. So was there a concern on your part</p> <p>18 that if Eber Brothers didn't do this kind of thing</p> <p>19 then the retailers would just go with another</p> <p>20 retailer that did?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 A. Yes.</p> <p>23 Q. So as a result of the consent order,</p> <p>24 did all of the wholesalers agree to end that</p> <p>25 practice?</p>	<p style="text-align: right;">Page 60</p> <p>1 L. Eber</p> <p>2 investigation or the consent order?</p> <p>3 A. I don't understand your question.</p> <p>4 Q. Did any retailers stop doing business</p> <p>5 with Eber Brothers as a result of the Attorney</p> <p>6 General's investigation?</p> <p>7 A. They could have. Or done less</p> <p>8 business.</p> <p>9 Q. So returning to the work with</p> <p>10 Southern, so the 2006 consent order, how does that</p> <p>11 affect any of the work that you have done for</p> <p>12 Southern?</p> <p>13 A. Well, it's the blueprint of how you</p> <p>14 have to work in the State of New York.</p> <p>15 Q. Is that something you advised Southern</p> <p>16 about?</p> <p>17 A. Yes.</p> <p>18 Q. Is that something you continue to</p> <p>19 advise Southern about?</p> <p>20 A. Yes.</p> <p>21 Q. When you started doing compliance work</p> <p>22 for Southern in addition to governmental affairs,</p> <p>23 did the terms of your consulting arrangement with</p> <p>24 them change at all?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 59</p> <p>1 L. Eber</p> <p>2 A. Yes.</p> <p>3 Q. Was Eber Brothers required to pay any</p> <p>4 sort of fines or penalties?</p> <p>5 A. Yes.</p> <p>6 Q. What was the fine or penalty?</p> <p>7 A. I don't remember. It was a</p> <p>8 substantial sum.</p> <p>9 Q. What do you mean by substantial?</p> <p>10 A. Hundreds of thousands.</p> <p>11 Q. But do you believe it was under a</p> <p>12 million dollars?</p> <p>13 A. Yes.</p> <p>14 Q. When was that paid?</p> <p>15 A. I don't remember.</p> <p>16 Q. Was it at approximately the time that</p> <p>17 the consent order went into place?</p> <p>18 A. Yeah. Well, yes. That's when it was</p> <p>19 done.</p> <p>20 Q. Did the Attorney General's</p> <p>21 investigation affect Eber Brothers' relationships</p> <p>22 with suppliers in any way?</p> <p>23 A. I don't remember that.</p> <p>24 Q. Did Eber Brothers lose any retailers</p> <p>25 as a result of the Attorney General's</p>	<p style="text-align: right;">Page 61</p> <p>1 L. Eber</p> <p>2 Q. So you didn't ask for more money for</p> <p>3 taking on more responsibility?</p> <p>4 A. No.</p> <p>5 Q. Why not?</p> <p>6 A. This is what they said they were</p> <p>7 paying me and that's the job and they have given</p> <p>8 me a lot of support in what I do.</p> <p>9 MR. BROOK: Let's go ahead to the next</p> <p>10 exhibit Plaintiffs' 27.</p> <p>11 (Plaintiffs' Exhibit 27, a document</p> <p>12 entitled Consulting Agreement Bates numbers</p> <p>13 EB 00000702 through 711, marked for</p> <p>14 identification, as of this date.)</p> <p>15 Q. So I am showing you what has been</p> <p>16 marked as Plaintiffs' Exhibit 27. It is a</p> <p>17 document entitled Consulting Agreement Bearing</p> <p>18 Bates numbers EB 00000702 through 711.</p> <p>19 Do you recognize this document?</p> <p>20 A. Yes.</p> <p>21 Q. What is it?</p> <p>22 A. It is a consulting agreement with</p> <p>23 Southern.</p> <p>24 Q. And it is between you and Southern</p> <p>25 Wine and Spirits of Upstate Inc.?</p>

<p style="text-align: right;">Page 62</p> <p>1 L. Eber</p> <p>2 A. If that's what it says, yes.</p> <p>3 Q. What was Southern Wine and Spirits</p> <p>4 Upstate Inc.?</p> <p>5 A. That would be their upstate business</p> <p>6 as opposed to Metropolitan New York.</p> <p>7 Q. Earlier you referred to a company</p> <p>8 called Southern Glazer.</p> <p>9 What is that?</p> <p>10 A. They merged with Glazer out of Dallas,</p> <p>11 Texas.</p> <p>12 Q. When did that merger occur?</p> <p>13 A. A couple of years ago I believe.</p> <p>14 Q. But for all intents and purposes in</p> <p>15 terms of your relationship with that, with the</p> <p>16 Southern company, the merger did not, with Glazer</p> <p>17 did not affect that relationship; correct?</p> <p>18 A. No.</p> <p>19 Q. How was the consulting agreement</p> <p>20 Exhibit 27 negotiated?</p> <p>21 A. You have to ask a lawyer. Probably</p> <p>22 Pat Dalton.</p> <p>23 Q. So Pat Dalton negotiated this for you?</p> <p>24 A. I would -- I believe so. I can't</p> <p>25 think of anyone else.</p>	<p style="text-align: right;">Page 64</p> <p>1 L. Eber</p> <p>2 Q. Why was it limited to five years?</p> <p>3 A. That's what they would give me because</p> <p>4 I needed a job and they had worked with us to help</p> <p>5 us stay out of bankruptcy and I felt an obligation</p> <p>6 to work with them and they thought that was a fair</p> <p>7 amount of time and gave me the time to set up a</p> <p>8 structure for them of lobbyists with the state. I</p> <p>9 am a lobbyist myself and to represent them in the</p> <p>10 legislature with the State Liquor Authority and</p> <p>11 the Governor's Office.</p> <p>12 Q. Why do you say that you needed a job?</p> <p>13 A. Everyone needs a job. We lost the</p> <p>14 business. We lost everything in New York.</p> <p>15 Q. You still had a job with Eber</p> <p>16 Connecticut; correct?</p> <p>17 A. Eber Connecticut was not in very good</p> <p>18 condition at that time.</p> <p>19 MR. BROOK: Let's go ahead and get</p> <p>20 another exhibit going here. Mark this as</p> <p>21 Plaintiffs' 28.</p> <p>22 (Plaintiffs' Exhibit 28, a series of</p> <p>23 W-2s that were produced by the parties in</p> <p>24 discovery Bates numbers EB 00021420 through</p> <p>25 428, marked for identification, as of this</p>
<p style="text-align: right;">Page 63</p> <p>1 L. Eber</p> <p>2 Q. Did you pay Pat Dalton for negotiating</p> <p>3 this agreement yourself?</p> <p>4 A. I believe he billed the company.</p> <p>5 Q. And why did he bill the company for</p> <p>6 doing work to negotiate an agreement between you</p> <p>7 personally?</p> <p>8 A. I don't remember who paid him.</p> <p>9 Q. But is it fair to say you don't</p> <p>10 remember paying Pat Dalton yourself; correct?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. I just don't remember. It's possible</p> <p>13 but I don't remember who paid him.</p> <p>14 Q. And just to be totally clear, if you</p> <p>15 look at the last page 9, what's listed page 9 of 9</p> <p>16 that's your signature; correct? There are</p> <p>17 two-page 9s.</p> <p>18 MR. RAMSEY: (Indicating.)</p> <p>19 A. Yes, the first one.</p> <p>20 Q. That is your signature?</p> <p>21 A. Yes.</p> <p>22 Q. How was -- let's step back.</p> <p>23 So this was an agreement originally</p> <p>24 drafted with a five year term; correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 65</p> <p>1 L. Eber</p> <p>2 date.)</p> <p>3 Q. Plaintiffs' 28 is a series of W-2s</p> <p>4 that were produced by the Eber parties in</p> <p>5 discovery bearing Bates numbers EB 00021420</p> <p>6 through 428.</p> <p>7 Do you recognize the documents that</p> <p>8 are copied off of this exhibit?</p> <p>9 A. Yes.</p> <p>10 Q. What are they?</p> <p>11 A. W-2s.</p> <p>12 Q. And do you see on the first page it</p> <p>13 has W-2s for the years 2007, 2008 and 2009?</p> <p>14 A. Mm-hmm.</p> <p>15 MR. RAMSEY: Yes?</p> <p>16 Q. Is that a yes?</p> <p>17 A. Yes.</p> <p>18 Q. And so is it correct that according to</p> <p>19 this exhibit Eber Brothers Wine and Liquor Corp.</p> <p>20 paid you 303,021 dollars for the year 2007?</p> <p>21 A. Yes.</p> <p>22 Q. So that was the year when the</p> <p>23 consulting agreement we were just looking at was</p> <p>24 executed; correct?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 66</p> <p>1 L. Eber</p> <p>2 Q. And then the next year you received a</p> <p>3 W-2 from Eber Connecticut LLC; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And in that year Eber Connecticut LLC</p> <p>6 paid you wages, tips and other compensation</p> <p>7 totalling 189,788 dollars; correct?</p> <p>8 A. Yes.</p> <p>9 Q. So not quite as much paid by Eber</p> <p>10 Connecticut as you had made the year before from</p> <p>11 Eber Brothers Wine and Liquor; correct?</p> <p>12 A. That's correct.</p> <p>13 Q. Just under two thirds of the amount;</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. Now the consulting agreement provided</p> <p>17 for an annual sum for five years of six hundred</p> <p>18 thousand dollars per year; correct?</p> <p>19 A. Yes.</p> <p>20 Q. So that was more than twice what you</p> <p>21 were paid in terms of salary by Eber Brothers Wine</p> <p>22 and Liquor Corp.?</p> <p>23 A. Yes.</p> <p>24 Q. How did that amount get determined in</p> <p>25 the course of negotiations?</p>	<p style="text-align: right;">Page 68</p> <p>1 L. Eber</p> <p>2 correct? Is that a yes?</p> <p>3 A. Yes.</p> <p>4 Q. In connection with the overall</p> <p>5 transaction, Southern ended up giving what was, I</p> <p>6 suppose some kind of a loan in the amount of three</p> <p>7 million dollars to one of the Eber companies; is</p> <p>8 that right?</p> <p>9 A. Yes. I don't know if it was a loan.</p> <p>10 It was money that the Eber companies owned, owed</p> <p>11 Southern for the money they came up with to keep</p> <p>12 us out of bankruptcy.</p> <p>13 Q. So it wasn't a loan per se but one or</p> <p>14 more of the Eber companies agreed that they owed</p> <p>15 Southern three million dollars as a result of the</p> <p>16 deal; correct?</p> <p>17 A. Yes. As a result of moneys that were</p> <p>18 paid to them to pay them back for the money they</p> <p>19 advanced us to keep us out of bankruptcy.</p> <p>20 Q. So how much money did Southern advance</p> <p>21 to the Eber companies not counting your consulting</p> <p>22 agreement?</p> <p>23 A. I don't remember the figure. It was</p> <p>24 substantial.</p> <p>25 Q. Was it more than three million</p>
<p style="text-align: right;">Page 67</p> <p>1 L. Eber</p> <p>2 A. They are a very large company. They</p> <p>3 are 17 billion today. They do 2 billion in New</p> <p>4 York. Two thousand employees. They pay big</p> <p>5 salaries.</p> <p>6 Q. So did you ask for this consulting</p> <p>7 agreement?</p> <p>8 A. They offered it to me.</p> <p>9 Q. And did they ask for anything else in</p> <p>10 return besides your governmental affairs services?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. They gave me the freedom to set up a</p> <p>13 lobbying governmental affairs structure in the</p> <p>14 State of New York for them.</p> <p>15 Q. Did they ask for anything else in</p> <p>16 return for agreeing to this six hundred thousand</p> <p>17 dollars a year for five years payment?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A. No.</p> <p>20 MR. RAMSEY: Form objection to that</p> <p>21 question.</p> <p>22 Q. So Southern did not -- let's step</p> <p>23 back.</p> <p>24 So six hundred thousand a year for</p> <p>25 five years, that's three million dollars total;</p>	<p style="text-align: right;">Page 69</p> <p>1 L. Eber</p> <p>2 dollars?</p> <p>3 A. Yes.</p> <p>4 Q. So of the amount of money that was</p> <p>5 advanced, Eber Brothers agreed to pay back three</p> <p>6 million of it; correct?</p> <p>7 MR. RAMSEY: Form.</p> <p>8 A. They paid back all the money that was</p> <p>9 advanced to them.</p> <p>10 Q. So separate from advancements, did</p> <p>11 Southern also make payments that were not subject</p> <p>12 to repayment to Eber Brothers not counting</p> <p>13 payments for inventory?</p> <p>14 A. No.</p> <p>15 Q. So is it just a coincidence then that</p> <p>16 the amount of money that Eber Brothers was</p> <p>17 required to pay Southern three million dollars is</p> <p>18 the same amount that the consulting agreement</p> <p>19 provided to be paid to you?</p> <p>20 MR. RAMSEY: Form.</p> <p>21 A. I never thought of it that way at all.</p> <p>22 I never thought of that.</p> <p>23 Q. Besides Patrick Dalton, was anyone</p> <p>24 else involved in negotiating or reviewing your</p> <p>25 consulting agreement with Southern?</p>

<p style="text-align: right;">Page 70</p> <p>1 L. Eber</p> <p>2 A. I don't remember.</p> <p>3 Q. Was Mike Gumaer involved in the</p> <p>4 consulting agreement with Southern?</p> <p>5 A. He would be aware of anything I was</p> <p>6 involved in. Everything I did he knew about.</p> <p>7 Q. Do you have any specific recollections</p> <p>8 of discussing the consulting agreement with Mike</p> <p>9 Gumaer?</p> <p>10 A. I don't remember, but there is nothing</p> <p>11 that I would have done that he would not be aware</p> <p>12 of.</p> <p>13 Q. And do you recall discussing the</p> <p>14 consulting agreement with any other employees of</p> <p>15 Eber Brothers?</p> <p>16 A. Possibly the financial officer John</p> <p>17 Ryan.</p> <p>18 Q. You say possibly.</p> <p>19 You don't specifically recall doing</p> <p>20 so?</p> <p>21 A. I can't remember.</p> <p>22 Q. And the consulting agreement was not</p> <p>23 specifically approved by the board of directors;</p> <p>24 correct?</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">Page 72</p> <p>1 L. Eber</p> <p>2 letters that appears to be written on Lester</p> <p>3 Eber's letterhead bearing Bates stamps EB 695</p> <p>4 through 701.</p> <p>5 Do you see these letters?</p> <p>6 A. Yes.</p> <p>7 Q. Do these refresh your recollection</p> <p>8 that there was a subsequent agreement, subsequent</p> <p>9 agreements between you and Southern concerning</p> <p>10 consulting?</p> <p>11 A. I think you are a little confused on</p> <p>12 this.</p> <p>13 Q. Okay. Help me understand.</p> <p>14 A. This is an agreement. I am a</p> <p>15 registered lobbyist in the State of New York.</p> <p>16 JACO is the regulatory agency that supervises</p> <p>17 lobbyists and they pay me to be a lobbyist. I</p> <p>18 think it is ten thousand dollars a year and I</p> <p>19 happen to have an agreement in order to lobby with</p> <p>20 the governmental agencies and the Governor's</p> <p>21 Office in the State of New York and that's what</p> <p>22 this is.</p> <p>23 Q. So are you saying are there any other</p> <p>24 -- let's step back.</p> <p>25 So just looking at the first page of</p>
<p style="text-align: right;">Page 71</p> <p>1 L. Eber</p> <p>2 Q. In addition to providing governmental</p> <p>3 affairs services, Southern also required you to</p> <p>4 enter into a restrictive covenant; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Why was that?</p> <p>7 A. It was what they wanted so that I</p> <p>8 wouldn't compete or someone else would hire me for</p> <p>9 doing governmental work. It is a specialty.</p> <p>10 Q. And after the initial five-year term,</p> <p>11 did you continue to have -- withdrawn.</p> <p>12 After the initial five-year term, were</p> <p>13 there subsequent agreements between you and</p> <p>14 Southern for consulting services?</p> <p>15 A. There is no agreement. I am a</p> <p>16 consultant for them.</p> <p>17 MR. BROOK: Let's go to the next</p> <p>18 Exhibit 29.</p> <p>19 (Plaintiffs' Exhibit 29, a series of</p> <p>20 letters that appears to be written on Lester</p> <p>21 Eber's letterhead bearing Bates stamps EB</p> <p>22 695 through 701, marked for identification,</p> <p>23 as of this date.)</p> <p>24 Q. I am showing you what has been marked</p> <p>25 as Plaintiffs' Exhibit 29. It is a series of</p>	<p style="text-align: right;">Page 73</p> <p>1 L. Eber</p> <p>2 this exhibit that's a letter dated January 1, 2012</p> <p>3 addressed to Steven Becker.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Who is Steven Becker?</p> <p>7 A. He is principal in charge of</p> <p>8 governmental affairs for the United States for</p> <p>9 Southern Glazers.</p> <p>10 Q. And this letter, is this something you</p> <p>11 wrote up or the language was given to you by</p> <p>12 someone else?</p> <p>13 A. I don't remember, but it is what has</p> <p>14 to be done to give the JACO in New York. I have</p> <p>15 to be a registered lobbyist. It is required.</p> <p>16 Q. And is the contract between you and</p> <p>17 the company that you are lobbying for something</p> <p>18 that has to be disclosed to the government?</p> <p>19 A. Yes, the State of New York. It is</p> <p>20 disclosed to the State of New York, yes.</p> <p>21 Q. So when we were looking at the</p> <p>22 consulting agreement, Exhibit 27, is that a</p> <p>23 document that was disclosed to the State of New</p> <p>24 York?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 74</p> <p>1 L. Eber</p> <p>2 Q. Why not?</p> <p>3 A. It's not a lobbying agreement. This</p> <p>4 is a governmental lobbying agreement that I have</p> <p>5 to have as being a lobbyist, a registered</p> <p>6 lobbyist.</p> <p>7 Q. So --</p> <p>8 A. The other is a private agreement</p> <p>9 between myself and Southern.</p> <p>10 Q. So for the years 2007 through 2011,</p> <p>11 was there a separate lobbying agreement between</p> <p>12 you and Southern?</p> <p>13 A. There should have been.</p> <p>14 Q. Do you recall whether there was an</p> <p>15 actual one?</p> <p>16 A. I don't remember, but I don't know if</p> <p>17 they required the agreements changed and I can't</p> <p>18 remember everything, but I think with the JACO</p> <p>19 regulations Southern told me that, you know, I</p> <p>20 have to have a -- because of the time I am</p> <p>21 spending in Albany with the legislature and the</p> <p>22 State Liquor Authority or with the Governor's</p> <p>23 Office that I have to register as a lobbyist and I</p> <p>24 had not registered as a lobbyist before.</p> <p>25 Q. So for the year 2012, the year covered</p>	<p style="text-align: right;">Page 76</p> <p>1 L. Eber</p> <p>2 compensation.</p> <p>3 What is your best estimate of what</p> <p>4 your annual compensation from Southern has been in</p> <p>5 total for any of the years from 2012 through the</p> <p>6 present?</p> <p>7 MR. RAMSEY: Form.</p> <p>8 Go ahead. If you can give an</p> <p>9 estimate, go ahead.</p> <p>10 A. Yeah, I think it's twenty-five</p> <p>11 thousand a month.</p> <p>12 Q. Do you recall attending a settlement</p> <p>13 conference in this case in early September last</p> <p>14 year?</p> <p>15 A. Yes, I believe so.</p> <p>16 Q. Do you remember that at one point</p> <p>17 everyone except for Mr. Gumaer's attorney was</p> <p>18 sitting in the courtroom with the judge in a</p> <p>19 circle and we were talking about certain fact</p> <p>20 questions that the plaintiffs had?</p> <p>21 A. I believe it went on. I don't</p> <p>22 remember the questions.</p> <p>23 Q. Do you recall that I brought up the</p> <p>24 topic of your consulting agreement with Southern</p> <p>25 at that point?</p>
<p style="text-align: right;">Page 75</p> <p>1 L. Eber</p> <p>2 by page one of Exhibit 29, what was your total</p> <p>3 compensation received from Southern Wine and</p> <p>4 Spirits for all your activities on their behalf</p> <p>5 lobbying, consulting or otherwise?</p> <p>6 A. I don't remember.</p> <p>7 Q. According to this document it says the</p> <p>8 fee for your services covered by it was ten</p> <p>9 thousand dollars?</p> <p>10 A. Oh, for lobbying. Yes, for being a</p> <p>11 registered lobbyist was 10,833 a month is what I</p> <p>12 get from them.</p> <p>13 Q. And were you paid other sums as well?</p> <p>14 A. I was paid yes, as a consultant. Yes.</p> <p>15 RQ MR. BROOK: We request that all</p> <p>16 payment records between Mr. Eber and</p> <p>17 Southern be produced including tax forms and</p> <p>18 any other agreements that may exist that</p> <p>19 show fees for consulting or other services</p> <p>20 beyond the amount reflected on this Exhibit</p> <p>21 29.</p> <p>22 MR. RAMSEY: I understand your</p> <p>23 request.</p> <p>24 BY MR. BROOK:</p> <p>25 Q. You said you don't remember the exact</p>	<p style="text-align: right;">Page 77</p> <p>1 L. Eber</p> <p>2 A. I don't remember it.</p> <p>3 Q. So you don't remember saying that that</p> <p>4 consulting agreement and the payments relating to</p> <p>5 it ended back in 2012?</p> <p>6 MR. RAMSEY: Form.</p> <p>7 A. Yes. I do remember the agreement</p> <p>8 ended after five years, the consulting agreement.</p> <p>9 Q. But is it your testimony that at least</p> <p>10 half or approximately half of the payments</p> <p>11 continued in the years afterwards?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. Yes.</p> <p>14 Q. It is your testimony that's not</p> <p>15 pursuant to any kind of agreement between you and</p> <p>16 Southern?</p> <p>17 A. Yes.</p> <p>18 Q. So how does the amount of money that</p> <p>19 Southern pays you get determined?</p> <p>20 A. It is what they feel my services are</p> <p>21 worth.</p> <p>22 Q. So what happens if Southern decides to</p> <p>23 pay you nothing for your services?</p> <p>24 A. I am through.</p> <p>25 Q. Meaning you are not going to provide</p>

<p style="text-align: right;">Page 78</p> <p>1 L. Eber</p> <p>2 services for Southern anymore?</p> <p>3 A. I won't be involved with them, that's</p> <p>4 correct, yes.</p> <p>5 Q. Other than monthly payments of</p> <p>6 approximately twenty-five thousand dollars per</p> <p>7 month, are there any other benefits or perks that</p> <p>8 you receive from Southern?</p> <p>9 MR. RAMSEY: Form.</p> <p>10 A. I don't get any fringe benefits from</p> <p>11 them of any kind. I do get expenses, legitimate</p> <p>12 business expenses.</p> <p>13 Q. Do you have an expense credit card for</p> <p>14 Southern?</p> <p>15 A. No.</p> <p>16 Q. So how do you submit your expenses to</p> <p>17 Southern?</p> <p>18 A. I submit them monthly.</p> <p>19 Q. And are you still bound by any kind of</p> <p>20 restrictive covenant with Southern?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 A. I don't believe so.</p> <p>23 Q. So you believe at this point if you</p> <p>24 went and tried to start up the Eber Brothers Wine</p> <p>25 and Liquor business in New York that would not be</p>	<p style="text-align: right;">Page 80</p> <p>1 L. Eber</p> <p>2 manage the Eber assets?</p> <p>3 MR. RAMSEY: Form.</p> <p>4 A. For the beneficiaries of the trust.</p> <p>5 Q. Who were the beneficiaries of the</p> <p>6 trust?</p> <p>7 A. Myself and my sisters.</p> <p>8 Q. And after your sisters passed, who</p> <p>9 were the other beneficiaries of the trust at that</p> <p>10 point?</p> <p>11 A. It was their children.</p> <p>12 Q. And that is for your sister Nan.</p> <p>13 What was her child's name?</p> <p>14 A. Mildred was my sister.</p> <p>15 Q. Sorry. I think I was using her middle</p> <p>16 name.</p> <p>17 What was Mildred's daughter's name?</p> <p>18 A. Audrey.</p> <p>19 Q. And your sister Sally, what were her</p> <p>20 kid's names?</p> <p>21 A. Danny and Lisa.</p> <p>22 Q. After your sisters passed, did you</p> <p>23 continue to understand you had an obligation to</p> <p>24 manage the trust for the benefit of your nieces</p> <p>25 and nephew?</p>
<p style="text-align: right;">Page 79</p> <p>1 L. Eber</p> <p>2 something that would violate any agreement you</p> <p>3 have with Southern?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. I don't know about that. It's not</p> <p>6 something I am going to do.</p> <p>7 Q. I am going to change topics now.</p> <p>8 How did you, if you know, how did it</p> <p>9 come to pass that you were named a trustee of the</p> <p>10 Allen Eber trust?</p> <p>11 A. I do not know.</p> <p>12 Q. Is this something that you had</p> <p>13 discussed with your father before his passing?</p> <p>14 A. No.</p> <p>15 Q. What is your understanding of what</p> <p>16 your responsibilities were as a named trustee of</p> <p>17 the Allen Eber trust?</p> <p>18 A. My responsibilities?</p> <p>19 Q. Yes.</p> <p>20 As a trustee, what did that mean that</p> <p>21 you had to do?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A. With the -- work with the other</p> <p>24 co-trustees in managing the Eber assets.</p> <p>25 Q. And for whom's benefit did you have to</p>	<p style="text-align: right;">Page 81</p> <p>1 L. Eber</p> <p>2 A. I didn't manage the trust. I worked</p> <p>3 with the other two trustees.</p> <p>4 Q. Who were the other two trustees?</p> <p>5 A. Mike Gumaer and the bank.</p> <p>6 Q. What was Mike Gumaer's involvement in</p> <p>7 managing the trust?</p> <p>8 A. He was a lawyer and he was put there</p> <p>9 by my father to work and guide me in the</p> <p>10 management of the business and to work with me in</p> <p>11 the trust.</p> <p>12 Q. Was Mike Gumaer a lawyer for the</p> <p>13 trust?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 A. No. He was a lawyer for Eber Brothers</p> <p>16 but he was a trustee of the trust.</p> <p>17 Q. What was the bank's responsibility</p> <p>18 with respect to the trust?</p> <p>19 A. They were there. They did a lot of</p> <p>20 the paperwork and legal work of the operation of</p> <p>21 the trust.</p> <p>22 Q. You understood that the Eber Brothers</p> <p>23 business was a trust asset; correct?</p> <p>24 A. Yes.</p> <p>25 Q. What did that mean in terms of how it</p>

<p style="text-align: right;">Page 82</p> <p>1 L. Eber</p> <p>2 affected your management of the Eber Brothers</p> <p>3 business?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 MR. CALIHAN: Form.</p> <p>6 A. I don't understand the question.</p> <p>7 Q. Did the fact that the Eber Brothers</p> <p>8 business was owned by the trust affect the way in</p> <p>9 which you managed the Eber Brothers business at</p> <p>10 all?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. I reported to the trust.</p> <p>13 Q. So since you were a co-trustee --</p> <p>14 withdrawn.</p> <p>15 Putting aside who you reported to, did</p> <p>16 you understand that you had an obligation to run</p> <p>17 the Eber Brothers business for the benefit of the</p> <p>18 trust beneficiaries?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A. Could you repeat that question?</p> <p>21 Q. The Eber Brothers business, at the top</p> <p>22 level there was Eber Brothers and Co., Inc.;</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. And is it correct that all of the</p>	<p style="text-align: right;">Page 84</p> <p>1 L. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 A. Yes, I believe so.</p> <p>4 Q. So with respect to the company Eber</p> <p>5 Brothers and Co., Inc., you understood you had a</p> <p>6 fiduciary duty with respect to the trust, your</p> <p>7 sisters and yourself?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 Q. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. And did you understand that when you</p> <p>12 owe fiduciary duties to multiple individuals at</p> <p>13 the same level like that that you are not allowed</p> <p>14 to prefer one individual shareholder over another</p> <p>15 individual shareholder?</p> <p>16 MR. CALIHAN: Objection to form.</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A. I never got into any of this. This is</p> <p>19 something I just did my job with the company and</p> <p>20 reported to the trustees of the trust.</p> <p>21 Q. Was it your understanding that you</p> <p>22 could issue dividends or distributions to some</p> <p>23 shareholders but not others?</p> <p>24 A. I don't understand the question. It's</p> <p>25 is something I never -- I don't have an</p>
<p style="text-align: right;">Page 83</p> <p>1 L. Eber</p> <p>2 shares of that business, at least all the voting</p> <p>3 shares, were controlled by the Allen Eber trust?</p> <p>4 A. Yes.</p> <p>5 Q. And is it your understanding that it</p> <p>6 is the voting common shareholders to whom a</p> <p>7 corporate officer owes a primary duty of care?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A. I don't have an answer for you on</p> <p>10 that. I don't know.</p> <p>11 Q. Who are the other shareholders in Eber</p> <p>12 Brothers and Co., Inc. besides the Allen Eber</p> <p>13 Trust?</p> <p>14 A. There was common non-voting stock was</p> <p>15 owned by myself and my sisters.</p> <p>16 Q. Did anyone else own Eber Brothers and</p> <p>17 Co., Inc. stock?</p> <p>18 A. No.</p> <p>19 Q. Did you have any understanding as to</p> <p>20 whether -- withdrawn.</p> <p>21 So you did understand that as a</p> <p>22 corporate officer and a director you had a</p> <p>23 fiduciary duty towards the shareholders of the</p> <p>24 company; correct?</p> <p>25 MR. CALIHAN: Objection to form.</p>	<p style="text-align: right;">Page 85</p> <p>1 L. Eber</p> <p>2 understanding of what you are asking.</p> <p>3 Q. In terms of Eber Brothers and Co.,</p> <p>4 Inc., that held the stock of other Eber Brothers</p> <p>5 entities; correct?</p> <p>6 A. Yes.</p> <p>7 Q. Which entities did it control?</p> <p>8 A. Whatever ones that were there at the</p> <p>9 time.</p> <p>10 Q. So that included Eber Brothers Wine</p> <p>11 and Liquor Corp.; correct?</p> <p>12 A. Yes.</p> <p>13 Q. Were there other businesses such as a</p> <p>14 framing business?</p> <p>15 A. No.</p> <p>16 Q. Or --</p> <p>17 A. The produce business.</p> <p>18 Q. Produce business.</p> <p>19 What was that called?</p> <p>20 A. Eber and Co.</p> <p>21 Q. When did Eber and Co. stop operations?</p> <p>22 A. Eber and Co. was a produce business.</p> <p>23 Stopped quite a few years ago. I don't have the</p> <p>24 date.</p> <p>25 Q. Did you ever work for that produce</p>

<p style="text-align: right;">Page 86</p> <p>1 L. Eber</p> <p>2 business?</p> <p>3 A. Yes.</p> <p>4 Q. When was that?</p> <p>5 A. In high school and college.</p> <p>6 Q. Was it still operating at the time</p> <p>7 that you graduated from college?</p> <p>8 A. Yes.</p> <p>9 Q. Who managed that?</p> <p>10 A. Audrey Hays' father.</p> <p>11 Q. What was his name?</p> <p>12 A. Darwin Boslov, B-O-S-L-O-V.</p> <p>13 Q. So not likely a creationist?</p> <p>14 A. What?</p> <p>15 Q. Bad joke.</p> <p>16 Returning to Eber Brothers Wine and</p> <p>17 Liquor Corp., you were the president of that</p> <p>18 entity; correct?</p> <p>19 A. Eventually.</p> <p>20 Q. And what was your position with</p> <p>21 respect to Eber Brothers and Co., Inc. at the same</p> <p>22 time you were president of Eber Brothers Wine and</p> <p>23 Liquor Corp.?</p> <p>24 A. I was president of that too.</p> <p>25 Q. Besides Eber Brothers and Co., Inc.,</p>	<p style="text-align: right;">Page 88</p> <p>1 L. Eber</p> <p>2 as president of Eber Brothers Wine and Liquor</p> <p>3 Corp.; correct?</p> <p>4 A. Yes.</p> <p>5 Q. But you remained president of Eber</p> <p>6 Brothers and Co., Inc.?</p> <p>7 A. Yeah, it's possible. I don't</p> <p>8 remember. There are a lot of companies. It can</p> <p>9 get confusing.</p> <p>10 Q. What is your current position with</p> <p>11 Eber Brothers and Co., Inc.?</p> <p>12 A. My current position with Eber Brothers</p> <p>13 and Co.? I could be a director. I don't remember</p> <p>14 what else. The company actually there are so many</p> <p>15 of them it confuses me. I would have to look at</p> <p>16 what it actually is.</p> <p>17 Q. Other than yourself, do you recall</p> <p>18 anyone else whoever served as president of Eber</p> <p>19 Brothers and Co., Inc.?</p> <p>20 A. It's possible there could be somebody</p> <p>21 else.</p> <p>22 Q. What is Wendy's position with Eber</p> <p>23 Brothers and Co., Inc.?</p> <p>24 A. She may be president of it.</p> <p>25 Q. When is the last time there was any</p>
<p style="text-align: right;">Page 87</p> <p>1 L. Eber</p> <p>2 were there any other shareholders in Eber Brothers</p> <p>3 Wine and Liquor Corp. when you were president of</p> <p>4 it?</p> <p>5 A. Not that I remember.</p> <p>6 Q. So as president of Eber Brothers Wine</p> <p>7 and Liquor Corp. you understood that your</p> <p>8 fiduciary duties to the shareholders ran to</p> <p>9 ultimately the Allen Eber Trust; correct?</p> <p>10 MR. RAMSEY: Form.</p> <p>11 A. I reported to the Allen Eber Trust.</p> <p>12 Q. And Eber Brothers Wine and Liquor</p> <p>13 Corp. in turn opened all of the shares in Eber</p> <p>14 Brothers Wine and Liquor Metro Inc. once that was</p> <p>15 created in the nineties; correct?</p> <p>16 A. I don't remember. It's possible, but</p> <p>17 I don't remember.</p> <p>18 Q. Are there any Eber Brothers entities</p> <p>19 that were owned or at one point controlled by Eber</p> <p>20 Brothers and Co., Inc., where you did not believe</p> <p>21 that you had fiduciary duties to the beneficiaries</p> <p>22 of the trust?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 A. No.</p> <p>25 Q. At some point you ended up resigning</p>	<p style="text-align: right;">Page 89</p> <p>1 L. Eber</p> <p>2 kind of election of either officers or directors</p> <p>3 for Eber Brothers and Co., Inc.?</p> <p>4 A. I don't remember.</p> <p>5 Q. Why did you resign as president of</p> <p>6 Eber Brothers Wine and Liquor Corp.?</p> <p>7 A. Because it didn't see -- it didn't --</p> <p>8 there was nothing for me to do in Eber Wine and</p> <p>9 Liquor Corp. anymore. I was working for Southern</p> <p>10 in New York and then I was involved in Eber</p> <p>11 Connecticut.</p> <p>12 Q. Did someone replace you as president</p> <p>13 of Eber Brothers Wine and Liquor Corp.?</p> <p>14 A. I believe so.</p> <p>15 Q. Who was that?</p> <p>16 A. It could be Wendy Eber. I don't</p> <p>17 remember.</p> <p>18 Q. Well, if there was nothing for you to</p> <p>19 do, was there something for Wendy Eber to do?</p> <p>20 A. Yes.</p> <p>21 MR. RAMSEY: Form.</p> <p>22 Q. What was that?</p> <p>23 A. She has a very strong financial</p> <p>24 background and there were a lot of problems there</p> <p>25 and she was very capable in relating to solving</p>

<p style="text-align: right;">Page 90</p> <p>1 L. Eber</p> <p>2 those problems and dealing with regulatory</p> <p>3 agencies and moneys that were owed and different</p> <p>4 things that were thrown against the company.</p> <p>5 Q. Which regulatory agencies are you</p> <p>6 referring to?</p> <p>7 A. Anyone that would -- any financial</p> <p>8 ones that would be involved in any business. No</p> <p>9 one in particular but there are different agencies</p> <p>10 that any business confronts with.</p> <p>11 Q. So there was no particular regulatory</p> <p>12 agency or governmental or quasi governmental body</p> <p>13 that you were specifically referring to when you</p> <p>14 said that Wendy would need to interact with them</p> <p>15 as president of the Eber Brothers Wine and Liquor</p> <p>16 Corp.?</p> <p>17 A. Well, you know the problems the</p> <p>18 company had with the past Pension Benefit</p> <p>19 Guarantee Corporation.</p> <p>20 Q. So that's one.</p> <p>21 A. And whatever other ones in different</p> <p>22 situations that the company was faced with.</p> <p>23 Q. What was the situation with Pension</p> <p>24 Benefit Guarantee Corp.?</p> <p>25 A. That Eber Brothers had a defined</p>	<p style="text-align: right;">Page 92</p> <p>1 L. Eber</p> <p>2 that PBGC would be placing a lien on corporate</p> <p>3 assets?</p> <p>4 A. No.</p> <p>5 Q. So as of 2012, did you expect that</p> <p>6 Eber Brothers would be able to continue making the</p> <p>7 payments due to PBGC?</p> <p>8 A. The money wasn't there. You know we</p> <p>9 tried to resolve it. It was a legacy that doesn't</p> <p>10 go away. If you know the ERISA laws there is no</p> <p>11 way out of it.</p> <p>12 Q. Did you try to find a way out of it?</p> <p>13 A. Yes.</p> <p>14 Q. What was that?</p> <p>15 A. Hired legal counsels that specialize</p> <p>16 in it who I paid personally.</p> <p>17 Q. Which counsel is that?</p> <p>18 A. Groom in Washington, D.C.</p> <p>19 Q. Anyone else?</p> <p>20 A. With the PBGC you are talking about?</p> <p>21 Q. Yes, to help get out of the ERISA laws</p> <p>22 as you said.</p> <p>23 A. We hired a law firm. They have a</p> <p>24 branch in Rochester. Hourihan, he was the lawyer</p> <p>25 on it.</p>
<p style="text-align: right;">Page 91</p> <p>1 L. Eber</p> <p>2 benefit pension plan going back to 1950s and after</p> <p>3 they couldn't afford to make the payments and so</p> <p>4 the Pension Benefit Guarantee Corporation put the</p> <p>5 company in default under the ERISA laws and we had</p> <p>6 a deal with it.</p> <p>7 Q. When was the default that you just</p> <p>8 referred to?</p> <p>9 A. I don't have the exact -- I don't</p> <p>10 remember the exact date.</p> <p>11 Q. By default do you mean place the lien</p> <p>12 against the corporate assets?</p> <p>13 A. Yes.</p> <p>14 Q. Yes?</p> <p>15 A. Yes.</p> <p>16 Q. When did that occur?</p> <p>17 A. I don't remember the exact date.</p> <p>18 Q. Was it in approximately 2014?</p> <p>19 A. It could have been. If you have it</p> <p>20 there. I can't remember these dates. I am glad I</p> <p>21 remember what I did yesterday.</p> <p>22 Q. So your resignation was in 2012 to the</p> <p>23 best of your recollection; correct?</p> <p>24 A. Yes.</p> <p>25 Q. So as of 2012 were you anticipating</p>	<p style="text-align: right;">Page 93</p> <p>1 L. Eber</p> <p>2 Q. Is this the Bond --</p> <p>3 A. Bond Schoeneck, thank you.</p> <p>4 Q. Any other lawyers that you hired?</p> <p>5 A. I don't remember. It's possible, but</p> <p>6 I don't remember.</p> <p>7 Q. Do you recognize the name Glenn Sturm?</p> <p>8 A. Yes.</p> <p>9 Q. Who is he?</p> <p>10 A. A lawyer.</p> <p>11 Q. Is he a lawyer who you hired?</p> <p>12 A. No.</p> <p>13 Q. Who hired Glenn Sturm?</p> <p>14 A. Well, I met him and he was hired, he</p> <p>15 was hired. I would say I was involved in hiring</p> <p>16 him. I correct that, and my daughter Wendy.</p> <p>17 Q. And for what purpose was he hired?</p> <p>18 A. To help Eber Connecticut out of dire</p> <p>19 financial straights.</p> <p>20 Q. How specifically was Glenn Sturm</p> <p>21 qualified to do that?</p> <p>22 A. He was a partner, senior partner of</p> <p>23 Mullins something in Atlanta. Very well</p> <p>24 respected. Had done a lot in turnaround companies</p> <p>25 and was going to -- did help us in navigating</p>

24 (Pages 90 - 93)

<p style="text-align: right;">Page 94</p> <p>1 L. Eber</p> <p>2 through a very difficult financial period.</p> <p>3 Q. How were you introduced to Glenn</p> <p>4 Sturm?</p> <p>5 A. I met him in a restaurant.</p> <p>6 Q. Where was that?</p> <p>7 A. In New Haven.</p> <p>8 Q. When was that?</p> <p>9 A. I don't have the date.</p> <p>10 Q. Was it years before you had hired him</p> <p>11 or shortly beforehand?</p> <p>12 A. Shortly before we hired him.</p> <p>13 Q. And what kinds of things did Glenn</p> <p>14 Sturm advise you about in terms of the subject</p> <p>15 matter?</p> <p>16 A. Tried to get us bank loans. Brought</p> <p>17 in consultants to help streamline the company.</p> <p>18 Talk to our management. Education. Had an</p> <p>19 excellent legal background and everything.</p> <p>20 Q. Did he advise you or the companies</p> <p>21 concerning their debts and trying to get out of</p> <p>22 some of the debts that were owed to other third</p> <p>23 parties like PBGC?</p> <p>24 MR. RAMSEY: Form.</p> <p>25 A. He did advise us on debt and how to</p>	<p style="text-align: right;">Page 96</p> <p>1 L. Eber</p> <p>2 Mullins; is that right?</p> <p>3 A. I believe so. I can't remember the</p> <p>4 exact but he was working on his own at some point.</p> <p>5 Q. And once he was working on his own,</p> <p>6 how was the topic of selling him a piece of the</p> <p>7 company broached?</p> <p>8 A. I don't know. I don't remember. I</p> <p>9 was not involved in that.</p> <p>10 Q. Who was?</p> <p>11 A. I would say my daughter Wendy.</p> <p>12 MR. RAMSEY: When you get to a good</p> <p>13 place Brian to take five minutes.</p> <p>14 MR. BROOK: We can do that, sure.</p> <p>15 THE VIDEOGRAPHER: This marks the end</p> <p>16 of media unit two in the videotaped</p> <p>17 deposition of Lester Eber. We are going off</p> <p>18 the record. Time is 11:32.</p> <p>19 (Recess taken.)</p> <p>20 THE VIDEOGRAPHER: This marks the</p> <p>21 beginning of media unit number three in the</p> <p>22 videotaped deposition of Lester Eber. We</p> <p>23 are going on the record. The time is 11:45.</p> <p>24 BY MR. BROOK:</p> <p>25 Q. Mr. Eber, when did you decide to cut</p>
<p style="text-align: right;">Page 95</p> <p>1 L. Eber</p> <p>2 restructure the company to make it look more</p> <p>3 attractive to banks so we could borrow money.</p> <p>4 Q. And what were some of the ways in</p> <p>5 which the company was restructured?</p> <p>6 A. I don't actually remember the actual</p> <p>7 restructuring.</p> <p>8 Q. Was part of the restructuring included</p> <p>9 in the sale of six percent of Eber Connecticut to</p> <p>10 Polebridge Bowman?</p> <p>11 A. I think the six percent to him was</p> <p>12 that he wanted to get paid. And it was a way to</p> <p>13 pay him and the company didn't have any money to</p> <p>14 pay him.</p> <p>15 Q. He was associated as a partner with a</p> <p>16 law firm Nelson Mullins; correct?</p> <p>17 A. Yes.</p> <p>18 Q. Wasn't he paid through payments to his</p> <p>19 law firm?</p> <p>20 A. There were payments to his law firm</p> <p>21 originally and then he -- I don't know what</p> <p>22 happened between he and his law firm. He went</p> <p>23 more on and off on his own.</p> <p>24 Q. So it was your understanding that</p> <p>25 while he was doing work for you he left Nelson</p>	<p style="text-align: right;">Page 97</p> <p>1 L. Eber</p> <p>2 your sister, nieces and nephew out of the family</p> <p>3 business?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. I didn't.</p> <p>6 Q. What do you mean by that?</p> <p>7 A. I didn't decide to cut anyone out of</p> <p>8 the family business.</p> <p>9 Q. Didn't you take actions that cut your</p> <p>10 sister, nieces and nephew out of the family</p> <p>11 business?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. I didn't look at it that way. I did</p> <p>14 what would save a company from going into</p> <p>15 liquidation.</p> <p>16 Q. How did and -- withdrawn.</p> <p>17 What did you do to save the company</p> <p>18 from going into liquidation that you were just</p> <p>19 referring to?</p> <p>20 A. I have personally paid legal and other</p> <p>21 expenses that I was not personally liable for to</p> <p>22 keep the company viable that were legacy costs</p> <p>23 that were shoved -- that were Eber Connecticut was</p> <p>24 obligated to. You have a list of all of them.</p> <p>25 Q. How did those cash infusions give you</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 L. Eber</p> <p>2 the right to take control of the business for</p> <p>3 yourself?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. That wasn't -- the cash infusions kept</p> <p>6 the company alive. If I didn't do that there</p> <p>7 wouldn't be a company to talk about today.</p> <p>8 Q. But you never at the time when you</p> <p>9 agreed to make the cash infusions, you never said</p> <p>10 if I do this I get to own the company, do I?</p> <p>11 A. I never -- I just did what had to be</p> <p>12 done to keep the company alive and if I hadn't had</p> <p>13 done it there wouldn't be a company today.</p> <p>14 Q. Is it your understanding that when</p> <p>15 someone loans money to a company that person has</p> <p>16 the right to take over the company in the event of</p> <p>17 nonpayment?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A. All I know is if you loan money you</p> <p>20 got to secure the loan so you can get your money</p> <p>21 back.</p> <p>22 Q. And is that what you did when you</p> <p>23 loaned money to Eber Brothers?</p> <p>24 A. I eventually did that.</p> <p>25 Q. So when you say you know when you owe</p>	<p style="text-align: right;">Page 100</p> <p>1 L. Eber</p> <p>2 A. It's a amended and restated promissory</p> <p>3 note from the company.</p> <p>4 Q. So this is Eber Brothers Wine and</p> <p>5 Liquor Corp. promising to pay you; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And who authorized this promissory</p> <p>8 note on behalf of Eber Brothers Wine and Liquor</p> <p>9 Corp.?</p> <p>10 A. I would imagine it is John Ryan, chief</p> <p>11 financial officer.</p> <p>12 Q. And you also signed on behalf of Eber</p> <p>13 Brothers Wine and Liquor Corp.?</p> <p>14 A. Yes.</p> <p>15 Q. And you also signed this document on</p> <p>16 behalf of yourself?</p> <p>17 A. Yes.</p> <p>18 Q. Now on the first page, do you see</p> <p>19 there is some handwritten amendments?</p> <p>20 A. Yes.</p> <p>21 Q. And the handwritten amendments</p> <p>22 increased the interest rate from six percent to</p> <p>23 nine percent?</p> <p>24 A. Yes.</p> <p>25 Q. And it looks like are those your</p>
<p style="text-align: right;">Page 99</p> <p>1 L. Eber</p> <p>2 money you have to secure the loan, at what point</p> <p>3 did you come to know that?</p> <p>4 A. It was always something that as a</p> <p>5 businessman that if you are lending money you got</p> <p>6 to handle the companies in desperate situations</p> <p>7 facing liquidation, you have to protect your, the</p> <p>8 money you have lent.</p> <p>9 Q. When did you secure any of your loans</p> <p>10 with Eber Brothers?</p> <p>11 A. I don't remember the exact dates.</p> <p>12 MR. BROOK: Let's mark this as</p> <p>13 Plaintiffs' Exhibit 30.</p> <p>14 (Plaintiffs' Exhibit 30, a document</p> <p>15 entitled Amended and Restated Promissory</p> <p>16 Note bearing Bates numbers EB 00031310</p> <p>17 through 311, marked for identification, as</p> <p>18 of this date.)</p> <p>19 Q. I am showing you what has been marked</p> <p>20 as Plaintiffs' Exhibit 30. It is a document</p> <p>21 entitled Amended and Restated Promissory Note</p> <p>22 bearing Bates numbers EB 00031310 through 311.</p> <p>23 Do you recognize this document?</p> <p>24 A. Yes.</p> <p>25 Q. What is it?</p>	<p style="text-align: right;">Page 101</p> <p>1 L. Eber</p> <p>2 initials by that?</p> <p>3 A. Yes.</p> <p>4 Q. But John Ryan's initials don't appear</p> <p>5 next to those changes, do they?</p> <p>6 A. I didn't see them.</p> <p>7 Q. Did John Ryan approve those changes?</p> <p>8 A. I would imagine he had to approve them</p> <p>9 and it is very possible there was a lawyer</p> <p>10 involved in this. Would probably be Pat Dalton</p> <p>11 that suggested this.</p> <p>12 Q. Do you actually remember John Ryan</p> <p>13 approving increasing the interest rate by 50</p> <p>14 percent?</p> <p>15 A. No.</p> <p>16 Q. When did the change to the interest</p> <p>17 rate occur?</p> <p>18 A. I don't remember.</p> <p>19 Q. This note, which is dated March 13,</p> <p>20 2006, that is not a secured promissory note;</p> <p>21 correct?</p> <p>22 A. If that's what you say it is. I</p> <p>23 haven't had a chance to read it.</p> <p>24 Q. Do you have any recollection of</p> <p>25 securing your 2006 promissory note?</p>

<p style="text-align: right;">Page 102</p> <p>1 L. Eber</p> <p>2 A. No.</p> <p>3 Q. Let's go to Exhibit 13 which we used</p> <p>4 yesterday. That is a line of credit note with a</p> <p>5 date in the upper right-hand corner of October</p> <p>6 blank 2009.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And this is a note that was issued by</p> <p>10 Eber Brothers Wine and Liquor Metro Inc.; correct?</p> <p>11 A. Yes.</p> <p>12 Q. If you look on page 3 you see it was</p> <p>13 authorized again by you and also Wendy Eber on</p> <p>14 behalf of Eber Metro?</p> <p>15 A. Yes.</p> <p>16 Q. Was this note something that was</p> <p>17 secured at the time that you executed it?</p> <p>18 A. I haven't had a chance to read this.</p> <p>19 I don't know. It probably wasn't.</p> <p>20 Q. And as you sit here today, do you have</p> <p>21 any recollection of insisting that you would not</p> <p>22 loan more money to the company unless you got a</p> <p>23 security agreement?</p> <p>24 A. No, I don't remember saying that. I</p> <p>25 did whatever I had to to keep the company alive.</p>	<p style="text-align: right;">Page 104</p> <p>1 L. Eber</p> <p>2 Q. So why did the Eber companies sign the</p> <p>3 security agreement?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. The companies were in desperate</p> <p>6 condition and could have been liquidated and it is</p> <p>7 normal to ask for security in those circumstances.</p> <p>8 Q. Are you saying it is normal to ask for</p> <p>9 security for a loan after the loan has already</p> <p>10 been executed?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. As I told you before, I did whatever I</p> <p>13 had to to keep the companies alive and not be</p> <p>14 liquidated. There isn't a time to say it</p> <p>15 secured or not. You got to do it to keep the</p> <p>16 company working, being able to run a business or</p> <p>17 there wouldn't be a company.</p> <p>18 Q. Who drafted the security agreement?</p> <p>19 A. I don't remember.</p> <p>20 Q. Was legal counsel retained for either</p> <p>21 side of this transaction?</p> <p>22 A. Very -- yeah. I would say yes.</p> <p>23 Q. Who was legal counsel?</p> <p>24 A. It would probably have been Pat</p> <p>25 Dalton.</p>
<p style="text-align: right;">Page 103</p> <p>1 L. Eber</p> <p>2 Q. So now let's take a look at Exhibit</p> <p>3 15. This is the security agreement entered into</p> <p>4 as of February 26, 2010.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you remember this agreement?</p> <p>8 A. Yes. I don't remember the details of</p> <p>9 it but I do remember the agreement.</p> <p>10 Q. Why did you enter into the security</p> <p>11 agreement with Eber Brothers Metro and Eber</p> <p>12 Brothers Wine and Liquor Corp.?</p> <p>13 A. To protect my loans.</p> <p>14 Q. What did the Eber companies get out of</p> <p>15 this?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 A. What did the Eber companies get out of</p> <p>18 it? They were kept alive by my loans.</p> <p>19 Q. But you already agreed to make loans,</p> <p>20 hadn't you?</p> <p>21 A. Yes, I had. Yes.</p> <p>22 Q. And you made those loans without</p> <p>23 requiring security; correct?</p> <p>24 A. That's correct.</p> <p>25 MR. RAMSEY: Form.</p>	<p style="text-align: right;">Page 105</p> <p>1 L. Eber</p> <p>2 Q. Do you specifically remember Pat</p> <p>3 Dalton working on this?</p> <p>4 A. I can't remember, but that's who it</p> <p>5 probably would have been.</p> <p>6 Q. Do you remember when the billing</p> <p>7 dispute between Eber Brothers and Pat Dalton</p> <p>8 began?</p> <p>9 A. Not the exact date of it.</p> <p>10 Q. Was it in approximately 2009 or '10?</p> <p>11 A. I don't think it was then. I can't</p> <p>12 remember. I don't remember the dates.</p> <p>13 Q. Did Glenn Sturm draft this agreement?</p> <p>14 A. He could have.</p> <p>15 Q. Let's look at one more document that</p> <p>16 we covered yesterday. Here we go. Exhibit 16</p> <p>17 this is another copy of the line of credit note</p> <p>18 but you may remember this from yesterday's</p> <p>19 testimony. On the upper right-hand corner it says</p> <p>20 the date is February 26, 2010.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Do you remember this version of the</p> <p>24 line of credit note?</p> <p>25 A. This one my signature is on it but I</p>

27 (Pages 102 - 105)

<p style="text-align: right;">Page 106</p> <p>1 L. Eber</p> <p>2 don't remember it.</p> <p>3 Q. So you don't remember why you signed</p> <p>4 the same line of credit note with two different</p> <p>5 dates?</p> <p>6 A. No.</p> <p>7 Q. When did -- let's look at either one</p> <p>8 of the line of credit notes either Exhibit 13 or</p> <p>9 16. Take your pick. I think the terms are all</p> <p>10 the same except for the date.</p> <p>11 MR. RAMSEY: Do you have 16 in front</p> <p>12 of you? Look at this (indicating).</p> <p>13 Q. Do you see at the bottom of paragraph</p> <p>14 3 it says in the final sentence that "The maturity</p> <p>15 date is defined as December 31, 2011."?</p> <p>16 A. Yes.</p> <p>17 Q. What is your understanding of what the</p> <p>18 maturity date means with respect to a line of</p> <p>19 credit note?</p> <p>20 A. That it has to be paid then.</p> <p>21 Q. And how was the maturity date for this</p> <p>22 line of credit note determined?</p> <p>23 A. I do not know.</p> <p>24 Q. Did you think that it was realistic as</p> <p>25 of February 2010 to expect Eber Metro or Eber</p>	<p style="text-align: right;">Page 108</p> <p>1 L. Eber</p> <p>2 your bank account.</p> <p>3 Q. At the time of approximately 2010</p> <p>4 through 2012, was Eber Brothers Wine and Liquor</p> <p>5 Corp. a solvent company?</p> <p>6 A. Wine and Liquor, I don't know what --</p> <p>7 I don't think they were solvent. I think they</p> <p>8 were struggling.</p> <p>9 Q. Did you have any understanding of what</p> <p>10 additional fiduciary duties a corporate executive</p> <p>11 has at a time period when a company is in the zone</p> <p>12 of insolvency?</p> <p>13 MR. RAMSEY: Form.</p> <p>14 A. I reported to the trust. They were</p> <p>15 aware of everything that went on. I did the best</p> <p>16 I could to keep above water.</p> <p>17 Q. Why did you create the company</p> <p>18 Alexbay?</p> <p>19 A. It was at the suggestion of my</p> <p>20 lawyers.</p> <p>21 Q. Which lawyers?</p> <p>22 A. Would have been David Beltz and there</p> <p>23 is another one. I cannot think of the other.</p> <p>24 Q. Who is David Beltz?</p> <p>25 A. He was a lawyer that advised me in</p>
<p style="text-align: right;">Page 107</p> <p>1 L. Eber</p> <p>2 Brothers and Co., Inc. to be able to pay 1.5</p> <p>3 million dollars plus interest within less than two</p> <p>4 years?</p> <p>5 MR. RAMSEY: Form.</p> <p>6 A. I did not draft this. I was involved</p> <p>7 in keeping the company in business. That was my</p> <p>8 priority. I was not involved in drafting this.</p> <p>9 Q. How does taking Eber Brothers Metro</p> <p>10 shares away from Eber Brothers Wine and Liquor</p> <p>11 Corp. and putting it into your own company an</p> <p>12 action that helps keep the company in business?</p> <p>13 MR. RAMSEY: Form.</p> <p>14 A. It restructures the company, cleans up</p> <p>15 the statement and turns a debt into an asset for a</p> <p>16 bank. So you can go -- because the company</p> <p>17 couldn't get a loan. It couldn't get any loans</p> <p>18 from anyone. So this cleans up the balance sheet</p> <p>19 and makes it as an asset instead of a debt.</p> <p>20 Q. So you wanted to transfer the company</p> <p>21 out from underneath the debts owed by Eber</p> <p>22 Brothers Wine and Liquor Corp.; correct?</p> <p>23 A. I wanted to get a bank loan for the</p> <p>24 company. You know in our business you have to pay</p> <p>25 the suppliers. They transfer the money out of</p>	<p style="text-align: right;">Page 109</p> <p>1 L. Eber</p> <p>2 Connecticut.</p> <p>3 Q. And why did he say that you should</p> <p>4 create the Alexbay company?</p> <p>5 MR. RAMSEY: Hold on. Just be careful</p> <p>6 you are not infringing on any conversation</p> <p>7 you had. The action he ultimately took you</p> <p>8 can testify about that. I don't want you</p> <p>9 testifying to any conversations you had with</p> <p>10 Mr. Beltz.</p> <p>11 Q. What was the purpose -- I understand</p> <p>12 that you created the company because a lawyer told</p> <p>13 you to do it, but what was the purpose you</p> <p>14 intended to have the company Alexbay serve?</p> <p>15 A. A personal holding company.</p> <p>16 Q. What did you want to hold when you</p> <p>17 created it?</p> <p>18 A. Whatever that had to be, that was, an</p> <p>19 investment that I would make.</p> <p>20 Q. Were you thinking of any specific</p> <p>21 investments at the time you created it?</p> <p>22 A. You know, I at the time I don't</p> <p>23 remember what but it was a personal LLC that I</p> <p>24 created that was created for me.</p> <p>25 Q. Do you remember when you created it?</p>

<p style="text-align: right;">Page 110</p> <p>1 L. Eber</p> <p>2 A. I don't remember the date.</p> <p>3 Q. Let's mark this next exhibit</p> <p>4 Plaintiffs' Exhibit 31.</p> <p>5 (Plaintiffs' Exhibit 31, a copy of</p> <p>6 two printouts made on October 1, 2016 from</p> <p>7 the Connecticut Department of State</p> <p>8 concerning the business Alexbay LLC, marked</p> <p>9 for identification, as of this date.)</p> <p>10 Q. Plaintiffs' Exhibit 31 in front of you</p> <p>11 is a copy of two printouts made on October 1, 2016</p> <p>12 from the Connecticut Department of State</p> <p>13 concerning the business Alexbay LLC.</p> <p>14 Do you see it on the first page it</p> <p>15 states the date of incorporation/registration as</p> <p>16 December 8, 2011? It is the fifth line down.</p> <p>17 A. Yes.</p> <p>18 Q. And is that consistent with your</p> <p>19 recollection of when you created the company?</p> <p>20 A. I would believe so.</p> <p>21 Q. What was the original name that you</p> <p>22 had for your company?</p> <p>23 A. Lester Eber LLC.</p> <p>24 Q. Why did you change the name?</p> <p>25 A. There were enough Eber -- a lot of</p>	<p style="text-align: right;">Page 112</p> <p>1 L. Eber</p> <p>2 A. Eber Connecticut, yes.</p> <p>3 Q. And here is a document previously</p> <p>4 marked Exhibit Plaintiffs' 8.</p> <p>5 A. Yes.</p> <p>6 Q. This is an affidavit that was signed</p> <p>7 by you under oath on December 8, 2011; correct?</p> <p>8 A. Yes.</p> <p>9 Q. What was the purpose of this</p> <p>10 affidavit?</p> <p>11 A. It's a law that any transfer of stock</p> <p>12 or change in ownership of stock has to be reported</p> <p>13 to the Consumer Protection Agency in Connecticut.</p> <p>14 Q. So as of December 8, 2011 you had</p> <p>15 already decided to take Eber Connecticut and put</p> <p>16 it in Alexbay in some way; correct?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A. I don't remember the date.</p> <p>19 Q. This affidavit is dated December 8th;</p> <p>20 correct?</p> <p>21 A. Yeah.</p> <p>22 Q. And this states item number 4 or let's</p> <p>23 start with item number 3. 3 says "Presently 79</p> <p>24 percent of Eber Connecticut is owned by me through</p> <p>25 an entity known as Eber Metro.</p>
<p style="text-align: right;">Page 111</p> <p>1 L. Eber</p> <p>2 Ebers. Just too much confusion. I think it</p> <p>3 needed a separate name.</p> <p>4 Q. How did you arrive at the Alexbay LLC</p> <p>5 name?</p> <p>6 A. There were other names that I tried</p> <p>7 but they were taken in the state of Connecticut</p> <p>8 and I go up there in the summertime and I didn't</p> <p>9 think anyone would probably use that name.</p> <p>10 Alexandria Bay is in upstate New York on the</p> <p>11 Canadian border.</p> <p>12 Q. It is named after Alexandria Bay?</p> <p>13 A. Yes.</p> <p>14 Q. Is that a place that you visited?</p> <p>15 A. In the summer, yes.</p> <p>16 Q. So is it -- having seen the date when</p> <p>17 Alexbay which was then called Lester Eber LLC was</p> <p>18 created, does that refresh your recollection as to</p> <p>19 what particular investments or other holdings you</p> <p>20 wanted to have held by the company?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 A. Yeah. I think it would be for the</p> <p>23 investment. Would be the investment in</p> <p>24 Connecticut.</p> <p>25 Q. You mean Eber Connecticut?</p>	<p style="text-align: right;">Page 113</p> <p>1 L. Eber</p> <p>2 4, I wish to transfer all of that 79</p> <p>3 percent that I own from Eber Metro to Lester Eber</p> <p>4 LLC, an entity which will also be wholly owned by</p> <p>5 me.</p> <p>6 5, this transfer is being done for no</p> <p>7 consideration and that it is being done strictly</p> <p>8 for organizational purposes. No money or other</p> <p>9 consideration will change hands."</p> <p>10 Did I read that correctly?</p> <p>11 A. Yes.</p> <p>12 Q. As of December 8, 2011 you had decided</p> <p>13 to take Eber Connecticut and have it be held by</p> <p>14 Lester Eber LLC; correct?</p> <p>15 MR. RAMSEY: Form.</p> <p>16 A. Yes.</p> <p>17 Q. Had any of the debt to you been</p> <p>18 defaulted on at that point?</p> <p>19 A. Hadn't been defaulted. Hadn't been</p> <p>20 paid either. There was no way of it being paid.</p> <p>21 Q. So you were still president of Eber</p> <p>22 Wine and Liquor and Eber Metro at that point;</p> <p>23 correct?</p> <p>24 A. Eber Metro but I don't know about Eber</p> <p>25 Wine and Liquor.</p>

<p style="text-align: right;">Page 114</p> <p>1 L. Eber</p> <p>2 Q. Eber Metro had assumed all the debt to</p> <p>3 you; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And so as president of Eber Metro</p> <p>6 weren't you obligated to try or -- withdrawn.</p> <p>7 Was it your understanding that as</p> <p>8 president of Eber Metro you had an obligation to</p> <p>9 attempt to either pay outstanding debts that were</p> <p>10 coming due or to renegotiate the terms of those</p> <p>11 debts to avoid default?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. I don't understand the question. You</p> <p>14 got me confused.</p> <p>15 Q. As the president of a company, do you</p> <p>16 want to see that company be liquidated?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A. I did everything possible to stop a</p> <p>19 liquidation.</p> <p>20 Q. And isn't the liquidation something</p> <p>21 that is often times a result of a default on a</p> <p>22 large amount of debt?</p> <p>23 A. Yes.</p> <p>24 Q. And as a secured lender at that point</p> <p>25 of Eber Metro, you had the right to require a</p>	<p style="text-align: right;">Page 116</p> <p>1 L. Eber</p> <p>2 A. I had asked my sister and my niece to</p> <p>3 contribute money and they both declined.</p> <p>4 Q. When did you ask them to contribute</p> <p>5 money?</p> <p>6 A. I don't have the exact date, but I</p> <p>7 did. There are letters that we submitted that</p> <p>8 prove it.</p> <p>9 Q. Does the timing of April 2010 sound</p> <p>10 correct for when he sent those letters?</p> <p>11 A. You probably have them here. So</p> <p>12 that's what it is. I don't remember that date.</p> <p>13 2010, can you remember?</p> <p>14 Q. Unfortunately yes, but --</p> <p>15 A. Good.</p> <p>16 Q. -- it is -- do you have any</p> <p>17 recollection of after those letters were sent to</p> <p>18 your sister and your niece ever raising the topic</p> <p>19 again with them about putting money into the</p> <p>20 Connecticut business?</p> <p>21 A. Yes.</p> <p>22 Q. When was that?</p> <p>23 A. I don't remember the date but I will</p> <p>24 let you know what my sister said. She said I want</p> <p>25 to get money out. I don't want to put money in.</p>
<p style="text-align: right;">Page 115</p> <p>1 L. Eber</p> <p>2 liquidation of the company if it went into</p> <p>3 default; correct?</p> <p>4 A. That's what it says. I don't know</p> <p>5 what -- I don't know the law of what you are</p> <p>6 talking about. So the only thing I knew was that</p> <p>7 I had to keep -- I had invested a lot of money. I</p> <p>8 continue to invest money and if I hadn't invested</p> <p>9 money there would have been no Eber Connecticut</p> <p>10 and what I did here was to clean up the statement</p> <p>11 to make it look taking debt and making it into</p> <p>12 assets so a bank would want to give us a loan.</p> <p>13 When Wells Fargo left us we were nowhere's. We</p> <p>14 had nothing. They put a workout team in our</p> <p>15 company and we were desperate and I personally</p> <p>16 lent enough money to keep this company, the last</p> <p>17 vestige afloat and paid legal fees and everything</p> <p>18 personally to do it. You got all those copies.</p> <p>19 MR. RAMSEY: You answered the</p> <p>20 question.</p> <p>21 Q. Why didn't you create an entity that</p> <p>22 rather than being held entirely by you was held by</p> <p>23 the Allen Eber Trust and transfer the company into</p> <p>24 that new entity?</p> <p>25 MR. RAMSEY: Form.</p>	<p style="text-align: right;">Page 117</p> <p>1 L. Eber</p> <p>2 Q. And when did she say that?</p> <p>3 A. I don't remember the date.</p> <p>4 Q. Was it around the time when you sent</p> <p>5 her the letter?</p> <p>6 A. It could have been and then later on.</p> <p>7 I don't have the dates.</p> <p>8 Q. Did you ever tell your sister that if</p> <p>9 she didn't put money in that you were going to</p> <p>10 take it away from the trust?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. No, I didn't say that to her.</p> <p>13 Q. Why not?</p> <p>14 A. Because it wasn't that desperate a</p> <p>15 situation. I did it when the company, it became</p> <p>16 desperate that if I didn't put the money in no one</p> <p>17 else was going to put it in and there wouldn't be</p> <p>18 a company.</p> <p>19 Q. How do you know if no one else was</p> <p>20 going to put money in if they knew what was at</p> <p>21 stake was the continuation of the family business</p> <p>22 under the family trust?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 A. They both refused and had no interest</p> <p>25 in putting any money into the company.</p>

<p style="text-align: right;">Page 118</p> <p>1 L. Eber</p> <p>2 Q. But you never told them of the</p> <p>3 possibility that if they did not put money in they</p> <p>4 would lose their interest in the family business;</p> <p>5 correct?</p> <p>6 MR. RAMSEY: Form. Asked and</p> <p>7 answered.</p> <p>8 Go ahead. You can answer it again.</p> <p>9 MR. BROOK: It was asked but not</p> <p>10 answered.</p> <p>11 A. I don't remember saying that to them.</p> <p>12 Q. Do you know anyone else who talked</p> <p>13 with your sister or your niece about the need to</p> <p>14 put money into the family business in 2010 or</p> <p>15 2011?</p> <p>16 A. I don't know.</p> <p>17 Q. Looking at Exhibit 8 in front of you,</p> <p>18 you signed that based upon your own knowledge and</p> <p>19 belief it says at the top; right?</p> <p>20 A. Yes.</p> <p>21 Q. So and this was also something where</p> <p>22 you made the statement or made the affidavit under</p> <p>23 penalty of false statement; correct?</p> <p>24 A. Yes.</p> <p>25 Q. So you understood that it was a</p>	<p style="text-align: right;">Page 120</p> <p>1 L. Eber</p> <p>2 is that you wish to transfer that 79 percent from</p> <p>3 Eber Metro to Lester Eber LLC.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. So isn't it true that actually this</p> <p>7 affidavit was written at a time when Eber</p> <p>8 Connecticut was still ultimately or 79 percent of</p> <p>9 Eber Connecticut was owned by the trust?</p> <p>10 MR. RAMSEY: Form.</p> <p>11 A. I don't understand what you -- I just</p> <p>12 don't understand what you are saying here.</p> <p>13 Q. You agree with me that if Eber Metro</p> <p>14 was still an entity that was owned and controlled</p> <p>15 by the trust, then the statement in item number</p> <p>16 three would not be correct?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A. Could you repeat that?</p> <p>19 (Record read.)</p> <p>20 A. That's correct.</p> <p>21 Q. Now item number 4 emphasizes that by</p> <p>22 saying that Lester Eber LLC is an entity which</p> <p>23 will also be wholly owned by me.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 119</p> <p>1 L. Eber</p> <p>2 statement being made under oath like your</p> <p>3 testimony today?</p> <p>4 A. Yes.</p> <p>5 Q. So you knew how important it was to</p> <p>6 tell the truth?</p> <p>7 A. Yes.</p> <p>8 Q. The whole truth; correct?</p> <p>9 MR. RAMSEY: Form.</p> <p>10 A. Yes.</p> <p>11 Q. And nothing but the truth; correct?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. Yes.</p> <p>14 Q. So item 3 you wrote in this affidavit</p> <p>15 "Presently 79 percent of Eber Connecticut is owned</p> <p>16 by me through an entity known as Eber Metro."</p> <p>17 Was that a true statement?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A. If that's what I said at the time and</p> <p>20 signed it, yes.</p> <p>21 Q. So it is your understanding that at</p> <p>22 the time that you signed this Eber Connecticut or</p> <p>23 Eber Metro was not owned by the trust?</p> <p>24 A. Yes.</p> <p>25 Q. And you said that item number 4 though</p>	<p style="text-align: right;">Page 121</p> <p>1 L. Eber</p> <p>2 Q. So you were making it clear that you</p> <p>3 were telling the recipient of this affidavit that</p> <p>4 Eber Metro was wholly owned by you; correct?</p> <p>5 MR. RAMSEY: Form.</p> <p>6 A. Yes.</p> <p>7 Q. And you said in item number 5 "This</p> <p>8 transfer is being done for no consideration."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. What did you mean by that?</p> <p>12 A. It is whatever it says. No</p> <p>13 consideration.</p> <p>14 Q. So no consideration means nothing is</p> <p>15 being received by Eber Metro in return for giving</p> <p>16 up the 79 percent of Eber Connecticut; is that</p> <p>17 right?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A. I didn't write this and I would have</p> <p>20 to talk to whoever did write this to explain it to</p> <p>21 me.</p> <p>22 Q. Who wrote this?</p> <p>23 A. I think it's probably something that</p> <p>24 the Consumer Protection Agency of The State of</p> <p>25 Connecticut required.</p>

<p style="text-align: right;">Page 122</p> <p>1 L. Eber</p> <p>2 Q. That doesn't answer who wrote this.</p> <p>3 A. I don't know.</p> <p>4 Q. So was it true that you wanted to</p> <p>5 transfer the 79 percent of Eber Connecticut to</p> <p>6 Lester Eber LLC for no consideration?</p> <p>7 MR. RAMSEY: Form.</p> <p>8 A. I can't explain that to you.</p> <p>9 Q. Let's jump ahead in time for a little</p> <p>10 bit here to late 2016 through 2017.</p> <p>11 Around the time when this lawsuit was</p> <p>12 first filed and months afterwards, do you recall</p> <p>13 that at that point you sought to acquire all of</p> <p>14 the shares of Eber Brothers and Co., Inc. from the</p> <p>15 Allen Eber Trust?</p> <p>16 A. Yeah. I believe so.</p> <p>17 Q. What did you offer to provide to the</p> <p>18 Allen Eber Trust in exchange for that?</p> <p>19 A. I don't remember the transaction. I</p> <p>20 was not -- I was aware of it but I was not</p> <p>21 actually into the details of it.</p> <p>22 Q. Did you have any lawyer who was</p> <p>23 helping you try to acquire Eber Brothers and Co.,</p> <p>24 Inc.?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 124</p> <p>1 L. Eber</p> <p>2 Q. You yourself were a co-trustee of the</p> <p>3 trust; correct?</p> <p>4 A. Yes.</p> <p>5 Q. So why didn't you just transfer the</p> <p>6 stock to yourself?</p> <p>7 A. I didn't do it.</p> <p>8 Q. Why not?</p> <p>9 A. I just didn't. I don't have an answer</p> <p>10 for you.</p> <p>11 Q. Did you think that you had the power</p> <p>12 or authority to do that?</p> <p>13 A. I don't know. It's possible I did. I</p> <p>14 just didn't do it.</p> <p>15 MR. BROOK: I think this next segment</p> <p>16 is going to be best done on one continuous</p> <p>17 whole. So why don't we go ahead and break</p> <p>18 for lunch right now.</p> <p>19 THE VIDEOGRAPHER: We are going off</p> <p>20 the record. The time is 12:20.</p> <p>21 (Luncheon recess: 12:20 p.m.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 123</p> <p>1 L. Eber</p> <p>2 Q. Who was that?</p> <p>3 A. John Herbert.</p> <p>4 Q. Anyone else?</p> <p>5 A. I believe he was the lawyer.</p> <p>6 Q. Who is Jim Vazzana?</p> <p>7 A. Yes. He is trust and estate lawyer.</p> <p>8 Q. Is he a lawyer that you hired?</p> <p>9 A. Yes.</p> <p>10 Q. To represent you individually?</p> <p>11 A. Yes.</p> <p>12 Q. And did you also ask him to help you</p> <p>13 acquire the stock of Eber Brothers and Co., Inc.?</p> <p>14 A. I believe so at one time.</p> <p>15 Q. Why did you want the Eber Brothers and</p> <p>16 Co., Inc. stock at that time?</p> <p>17 A. You know, I just don't remember the</p> <p>18 details of it.</p> <p>19 Q. But you asked for the stock on</p> <p>20 multiple occasions; correct?</p> <p>21 A. I believe so, yes.</p> <p>22 Q. And let's -- withdrawn.</p> <p>23 Who was it that you were asking to</p> <p>24 authorize the transfer of the stock?</p> <p>25 A. I don't understand the question.</p>	<p style="text-align: right;">Page 125</p> <p>1 L. Eber</p> <p>2 A F T E R N O O N S E S S I O N .</p> <p>3 (12:57 p.m.)</p> <p>4 L E S T E R E B E R ,</p> <p>5 having been previously sworn, resumed the</p> <p>6 stand and testified further as follows:</p> <p>7 EXAMINATION (Cont'd)</p> <p>8 BY MR. BROOK:</p> <p>9 THE VIDEOGRAPHER: We are going back</p> <p>10 on the record. The time is 12:59.</p> <p>11 Q. After breaking for lunch Mr. Eber,</p> <p>12 were you able to get some food?</p> <p>13 A. Yes.</p> <p>14 Q. And are you feeling okay to continue</p> <p>15 this deposition?</p> <p>16 A. Yes.</p> <p>17 Q. Any reason at all you can think of why</p> <p>18 you wouldn't be able to provide full and truthful</p> <p>19 testimony?</p> <p>20 A. No.</p> <p>21 Q. After this lawsuit was filed, did you</p> <p>22 become aware of the plans by your co-trustee</p> <p>23 Canandaigua National Bank and Trust to seek a</p> <p>24 judicial order terminating the trust?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 126</p> <p>1 L. Eber</p> <p>2 Q. How did you find out about that?</p> <p>3 A. I believe my lawyer Vazzana told me</p> <p>4 about it.</p> <p>5 Q. Did you know about that before it was</p> <p>6 filed in the court?</p> <p>7 A. No.</p> <p>8 Q. And so you appointed Mr. Vazzana to be</p> <p>9 your lawyer for that court proceeding; correct?</p> <p>10 A. Yes.</p> <p>11 Q. Had he represented you on anything</p> <p>12 before then?</p> <p>13 A. Yes.</p> <p>14 Q. What?</p> <p>15 A. Personal issues.</p> <p>16 Q. How long had he been representing you</p> <p>17 for personal issues?</p> <p>18 A. I don't remember. Could have been a</p> <p>19 couple of years. I don't remember.</p> <p>20 Q. Did any of those personal issues</p> <p>21 concern the Allen Eber Trust?</p> <p>22 A. No.</p> <p>23 Q. What was your understanding of what</p> <p>24 would happen with the assets or what was going to</p> <p>25 happen with the assets of the Allen Eber Trust if</p>	<p style="text-align: right;">Page 128</p> <p>1 L. Eber</p> <p>2 of the assets?</p> <p>3 A. No.</p> <p>4 Q. And you understood that the assets</p> <p>5 included the trust stock in Eber Brothers and Co.,</p> <p>6 Inc.; correct?</p> <p>7 MR. RAMSEY: Form.</p> <p>8 A. You know, I think that was</p> <p>9 questionable. I can't give you an answer on that.</p> <p>10 I don't know.</p> <p>11 Q. What was questionable about that?</p> <p>12 A. I don't know of the status of what the</p> <p>13 stock was or wasn't and I think that would be a</p> <p>14 question you would have to ask my lawyer.</p> <p>15 MR. BROOK: Let's mark this as the</p> <p>16 next exhibit Plaintiffs' 32.</p> <p>17 (Plaintiffs' Exhibit 32, a letter</p> <p>18 and some attachments that are dated July 12,</p> <p>19 2017 from Rita Nischal of Canandaigua</p> <p>20 National Bank and Trust to Lester Eber,</p> <p>21 marked for identification, as of this date.)</p> <p>22 MR. BROOK: Go ahead and do 33 as</p> <p>23 well.</p> <p>24 (Plaintiffs' Exhibit 33, a order in</p> <p>25 the Surrogates Court of The State of New</p>
<p style="text-align: right;">Page 127</p> <p>1 L. Eber</p> <p>2 Canandaigua National Bank had been successful in</p> <p>3 terminating the trust?</p> <p>4 A. Never would happen with the</p> <p>5 disbursement of the trust. You know, whatever the</p> <p>6 procedure was. I didn't know.</p> <p>7 Q. You didn't know what would happen with</p> <p>8 the assets?</p> <p>9 A. The assets would be distributed among</p> <p>10 the trustees. Not the trustees. The</p> <p>11 beneficiaries, excuse me.</p> <p>12 Q. How would the percentages or amounts</p> <p>13 of distribution be determined?</p> <p>14 A. By the percentage of the trustees.</p> <p>15 You know, there were -- not the trustees. Excuse</p> <p>16 me, by the beneficiaries divided three ways which</p> <p>17 would also Danny and his sister would split one of</p> <p>18 the thirds.</p> <p>19 Q. So it was going to be divided into</p> <p>20 thirds between one third going to you, one third</p> <p>21 going to Audrey Hays and one third being split</p> <p>22 between Lisa Stein and Dan Kleeberg; is that</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. And did you oppose that distribution</p>	<p style="text-align: right;">Page 129</p> <p>1 L. Eber</p> <p>2 York in Monroe County dated June 1, 2017</p> <p>3 signed by Surrogate Judge John M. Owens,</p> <p>4 marked for identification, as of this date.)</p> <p>5 Q. You have Exhibits 32 and 33 in front</p> <p>6 of you. Exhibit 32 is a letter and some</p> <p>7 attachments that are dated July 12, 2017 from Rita</p> <p>8 Nischal, N-I-S-C-H-A-L, of Canandaigua National</p> <p>9 Bank and Trust to Lester Eber.</p> <p>10 And Exhibit 33 is a order in the</p> <p>11 Surrogates Court of The State of New York in</p> <p>12 Monroe County dated June 1, 2017 signed by</p> <p>13 Surrogate Judge John M. Owens.</p> <p>14 Have you seen either or both of these</p> <p>15 documents before Mr. Eber?</p> <p>16 A. Yes.</p> <p>17 Q. When did you see the judicial order</p> <p>18 Exhibit 33?</p> <p>19 A. I don't remember.</p> <p>20 Q. Was it around the time that the order</p> <p>21 was entered?</p> <p>22 A. It was whenever my lawyer sent it to</p> <p>23 me.</p> <p>24 Q. And do you have any reason to doubt</p> <p>25 that your lawyer sent it to you promptly after</p>

<p style="text-align: right;">Page 130</p> <p>1 L. Eber</p> <p>2 receiving it himself?</p> <p>3 A. No.</p> <p>4 Q. And Exhibit 32, when did you see that?</p> <p>5 A. I saw it when it was sent to me. It</p> <p>6 is July 12th. So whenever that time period.</p> <p>7 Q. Did you review the documents that were</p> <p>8 enclosed with it?</p> <p>9 A. Yes.</p> <p>10 Q. Look at page 2 of this exhibit.</p> <p>11 It says receipt and release in the</p> <p>12 upper right-hand corner?</p> <p>13 A. Yes.</p> <p>14 Q. Did you ever sign a receipt and</p> <p>15 release for Canandaigua National Bank?</p> <p>16 A. You know, I don't think I did, but I</p> <p>17 could have. I don't remember.</p> <p>18 Q. Take a look at page 3.</p> <p>19 You see it is a table saying residuary</p> <p>20 TUW Allen Eber proposed distribution?</p> <p>21 A. Yes.</p> <p>22 Q. And you saw that too; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And so you saw presumably that listed</p> <p>25 on the assets here was three line items for Eber</p>	<p style="text-align: right;">Page 132</p> <p>1 L. Eber</p> <p>2 the Allen Eber Trust was distributed to the</p> <p>3 beneficiaries of the trust?</p> <p>4 A. Yes.</p> <p>5 Q. Did you insist that there be certain</p> <p>6 adjustments made to the distribution after you saw</p> <p>7 this chart page 3 of Exhibit 32?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A. (Indicating.)</p> <p>10 Q. Yes.</p> <p>11 A. I don't remember.</p> <p>12 MR. BROOK: Let's mark this next</p> <p>13 exhibit Plaintiffs' Exhibit 34.</p> <p>14 (Plaintiffs' Exhibit 34, a letter</p> <p>15 and attachments that was produced yesterday</p> <p>16 by Canandaigua National Bank Bates stamped</p> <p>17 CNB-PL 0010 through 12, marked for</p> <p>18 identification, as of this date.)</p> <p>19 Q. Exhibit 34 in front of you is a letter</p> <p>20 and attachments that was produced yesterday by</p> <p>21 Canandaigua National Bank and is Bates stamp by me</p> <p>22 as CNB-PL 0010 through 12.</p> <p>23 Do you recognize this document?</p> <p>24 A. Yes.</p> <p>25 Q. What is it?</p>
<p style="text-align: right;">Page 131</p> <p>1 L. Eber</p> <p>2 Brothers and Co. stock?</p> <p>3 A. Yes.</p> <p>4 Q. And this shows that stock being</p> <p>5 distributed in roughly the proportions you said</p> <p>6 the trust assets should be distributed; correct?</p> <p>7 A. That I had said?</p> <p>8 Q. Well, you previously testified that</p> <p>9 you understood that the distribution would be one</p> <p>10 third to you, one third to Audrey Hays and one</p> <p>11 third split between Dan Kleeberg and Lisa Stein?</p> <p>12 A. Yes.</p> <p>13 Q. And this reflects close to that</p> <p>14 distribution; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Did you have any objection to that</p> <p>17 distribution of shares of Eber Brothers and Co.</p> <p>18 stock as specified in this proposed distribution</p> <p>19 chart?</p> <p>20 A. I don't remember it. I could have.</p> <p>21 There has been some discussion about it, but I</p> <p>22 don't remember what I said or didn't say or what</p> <p>23 our position was.</p> <p>24 Q. It is your understanding ultimately</p> <p>25 the publicly traded stocks and the cash held by</p>	<p style="text-align: right;">Page 133</p> <p>1 L. Eber</p> <p>2 A. It's a letter to Canandaigua Bank</p> <p>3 reducing the money to Lisa Stein from the money</p> <p>4 that was given by the trust to her daughter Erica</p> <p>5 Stein.</p> <p>6 Q. And is this a letter that you asked to</p> <p>7 have sent on your behalf?</p> <p>8 A. I am copied on it. So I was aware of</p> <p>9 it.</p> <p>10 Q. Did you authorize Mr. Vazzana to send</p> <p>11 it?</p> <p>12 A. I was aware of it and I was involved</p> <p>13 in that knew what was going on. I was aware of</p> <p>14 it. That's what I can say to you.</p> <p>15 Q. Were you aware of the letter going out</p> <p>16 before it was sent?</p> <p>17 A. Yes.</p> <p>18 Q. This was not the first letter that was</p> <p>19 sent on your behalf asking Canandaigua National</p> <p>20 Bank to reduce the amount of distribution from the</p> <p>21 trust to Lisa Stein, was it?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A. No. You are asking questions that</p> <p>24 show in the other letters. So you know the</p> <p>25 answer.</p>

<p style="text-align: right;">Page 134</p> <p>1 L. Eber</p> <p>2 Q. Why did you want the amount of</p> <p>3 distribution from the trust to Lisa Stein reduced</p> <p>4 versus what Canandaigua had proposed?</p> <p>5 A. I believe the reason and you say me, I</p> <p>6 think there were other people involved in this as</p> <p>7 you see who were copied, lawyers, that there was</p> <p>8 money had been given to, from the trust to her</p> <p>9 daughter.</p> <p>10 Q. So you wanted to make sure that only</p> <p>11 the cost of the money being given to Lisa Stein's</p> <p>12 daughter was borne solely by Lisa Stein; is that</p> <p>13 right?</p> <p>14 A. It was for her daughter out of Lisa</p> <p>15 Stein's money, the money that was to go to Lisa</p> <p>16 Stein. The trust, the way I understood it, took</p> <p>17 the money out of Lisa Stein's account.</p> <p>18 Q. And is it your understanding that</p> <p>19 based on your request Canandaigua National Bank</p> <p>20 the amount of the distribution to Lisa Stein was</p> <p>21 reduced in full by the amount that had been paid</p> <p>22 previously to Erica Stein?</p> <p>23 A. Yes.</p> <p>24 Q. And is there any amount of money</p> <p>25 that's still owed back to the other trust</p>	<p style="text-align: right;">Page 136</p> <p>1 L. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 Go ahead.</p> <p>4 A. I believe that it is a legal question</p> <p>5 and I am not a lawyer.</p> <p>6 Q. What was your belief as of July 2017</p> <p>7 about the value of the Eber Brothers and Co., Inc.</p> <p>8 stock?</p> <p>9 MR. RAMSEY: Form.</p> <p>10 A. As I thought it was worthless.</p> <p>11 Q. Why did you believe that?</p> <p>12 A. Because it had no assets. What were</p> <p>13 the assets.</p> <p>14 Q. Why did you want to obtain the shares</p> <p>15 of Eber Brothers and Co., Inc. stock for yourself?</p> <p>16 A. I think, as I told you before, I think</p> <p>17 it is a legal question that you should ask the</p> <p>18 lawyers. I am not capable of answering it.</p> <p>19 Q. Was your goal to try to prevent</p> <p>20 plaintiffs from pursuing their lawsuit against</p> <p>21 you?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A. I said ask the lawyers. I don't have</p> <p>24 an answer for you.</p> <p>25 MR. BROOK: Let's go to this next</p>
<p style="text-align: right;">Page 135</p> <p>1 L. Eber</p> <p>2 beneficiaries by Lisa Stein?</p> <p>3 A. Not that I know.</p> <p>4 Q. Did you ask the Canandaigua National</p> <p>5 Bank also reduce the number of shares of Eber</p> <p>6 Brothers and Co. Inc. that were distributed to</p> <p>7 Lisa Stein?</p> <p>8 A. Did I, no. I don't remember that. I</p> <p>9 don't remember that, no.</p> <p>10 Q. Can you think of any reason why the</p> <p>11 number of shares that Eber Brothers and Co., Inc.</p> <p>12 should have been reduced, the numbers of shares --</p> <p>13 let me restart this.</p> <p>14 Can you think of any reason why the</p> <p>15 trusts distribution of shares of Eber Brothers and</p> <p>16 Co., Inc. should have been reduced for Lisa Stein</p> <p>17 based upon either the prior distributions to Erica</p> <p>18 Stein or for any other reason?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A. I think --</p> <p>21 MR. BROOK: I will withdraw that.</p> <p>22 That was still bad.</p> <p>23 Q. So can you think of any reason why the</p> <p>24 trusts distribution of Eber Brothers and Co., Inc.</p> <p>25 shares to Lisa Stein should have been reduced?</p>	<p style="text-align: right;">Page 137</p> <p>1 L. Eber</p> <p>2 Exhibit 35.</p> <p>3 (Plaintiffs' Exhibit 35, a e-mail</p> <p>4 and attachment dated October 31, 2018 sent</p> <p>5 by Paul Keneally with multiple recipients</p> <p>6 CNB-PL 0001 to 2, marked for identification,</p> <p>7 as of this date.)</p> <p>8 Q. Exhibit 35 in front of you is a e-mail</p> <p>9 and attachment dated October 31, 2018 sent by Paul</p> <p>10 Keneally with multiple recipients CNB-PL 0001 to</p> <p>11 2.</p> <p>12 Have you seen this before?</p> <p>13 A. I signed it, so I must have.</p> <p>14 Q. You're referring to the second page of</p> <p>15 the exhibit?</p> <p>16 A. Behind it, yeah.</p> <p>17 Q. So that is your signature?</p> <p>18 A. Yes.</p> <p>19 Q. And do you remember signing this</p> <p>20 document?</p> <p>21 A. I don't remember, but I did sign it.</p> <p>22 Q. How do you know that you signed it if</p> <p>23 you don't remember it?</p> <p>24 A. That's my signature. So nobody is</p> <p>25 putting my -- that's my signature on it.</p>

<p style="text-align: right;">Page 138</p> <p>1 L. Eber</p> <p>2 Q. The second page is addressed to the</p> <p>3 Allen Eber Trust care of the Canandaigua National</p> <p>4 Bank and Trust Company; correct?</p> <p>5 A. Yes.</p> <p>6 Q. And it says in all caps below that</p> <p>7 notice of intent to purchase shares; correct?</p> <p>8 A. Yes.</p> <p>9 Q. Then the body of it states "The</p> <p>10 undersigned hereby gives notice of my intent to</p> <p>11 purchase all shares of capital stock of Eber</p> <p>12 Brothers and Co., Inc. defined as the company of</p> <p>13 which the Allen Eber Trust is the registered</p> <p>14 holder that are proposed to be transferred to</p> <p>15 Daniel Kleeberg, Lisa Stein or Audrey Hays</p> <p>16 pursuant to Article 12 of the bylaws of the</p> <p>17 company." Then your signature.</p> <p>18 Did I read that correctly?</p> <p>19 A. Yes.</p> <p>20 Q. What was your purpose in sending this</p> <p>21 notice of intent?</p> <p>22 A. If you look at the bylaws of the</p> <p>23 company I had the right to do it.</p> <p>24 Q. Why do you say that?</p> <p>25 A. Read the bylaws.</p>	<p style="text-align: right;">Page 140</p> <p>1 L. Eber</p> <p>2 A. You have to ask my lawyer.</p> <p>3 Q. So you signed this without knowing how</p> <p>4 much money you were committing to pay?</p> <p>5 MR. RAMSEY: Form.</p> <p>6 A. I signed it. I don't have an answer</p> <p>7 for you on that. I think it's a legal question.</p> <p>8 Q. So for all you know you might need to</p> <p>9 pay the plaintiffs over two million dollars each</p> <p>10 in order to get the shares that you agreed to</p> <p>11 purchase?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. No.</p> <p>14 Q. Why do you say no?</p> <p>15 A. Because it isn't worth it.</p> <p>16 Q. Well, why do you say that?</p> <p>17 A. What's the -- where does it show that</p> <p>18 it is worth that kind of money? Can you show</p> <p>19 that?</p> <p>20 Q. Again, if it is not -- if you don't</p> <p>21 know how much the shares are worth, then how can</p> <p>22 you agree to purchase them?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 A. I told you I am not qualified to</p> <p>25 answer your question. Please consult my lawyer.</p>
<p style="text-align: right;">Page 139</p> <p>1 L. Eber</p> <p>2 Q. Did you read the bylaws?</p> <p>3 A. I have.</p> <p>4 Q. And it is your belief that the bylaws</p> <p>5 of the company permitted you to purchase the</p> <p>6 shares of capital stock of Eber Brothers and Co.</p> <p>7 stock?</p> <p>8 A. On the advice of counsel, yes.</p> <p>9 Q. Why did you wait until October 31,</p> <p>10 2018 to send this notice?</p> <p>11 A. Ask my lawyer.</p> <p>12 Q. Now you knew that Canandaigua National</p> <p>13 Bank and Trust Company had proposed to and</p> <p>14 attempted to transfer the Eber Brothers and Co.,</p> <p>15 Inc. shares to Dan Kleeberg, Lisa Stein and Audrey</p> <p>16 Hays a year before this date; correct?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A. If you are saying that you probably</p> <p>19 have something that shows that. I don't remember.</p> <p>20 Q. And you said here, what you signed</p> <p>21 your name to, you intended to purchase the shares;</p> <p>22 correct?</p> <p>23 A. That's what it says here.</p> <p>24 Q. How much money did you intend to</p> <p>25 purchase the shares for?</p>	<p style="text-align: right;">Page 141</p> <p>1 L. Eber</p> <p>2 Q. So you are authorizing us to ask these</p> <p>3 questions of your lawyer?</p> <p>4 DI MR. RAMSEY: Don't answer that.</p> <p>5 MR. BROOK: I think he already did,</p> <p>6 but I am just trying to make it clear.</p> <p>7 MR. CALIHAN: I don't agree, but.</p> <p>8 MR. BROOK: I know.</p> <p>9 Let's do two more exhibits after that.</p> <p>10 We are up to 36 and 37.</p> <p>11 (Plaintiffs' Exhibit 36, a printout</p> <p>12 of a table with some notes entitled</p> <p>13 Residuary TUW Allen Eber Proposed</p> <p>14 Distribution of Securities, marked for</p> <p>15 identification, as of this date.)</p> <p>16 (Plaintiffs' Exhibit 37, a e-mail</p> <p>17 dated September 15, 2017 sent by Jim Vazzana</p> <p>18 to R. Nischal at CNB, Canandaigua National</p> <p>19 Bank, with yourself as one of the people</p> <p>20 copied on it Bates stamped CNB-PL 0005,</p> <p>21 marked for identification, as of this date.)</p> <p>22 Q. Looking first at Exhibit 36. This is</p> <p>23 a printout of a table with some notes entitled</p> <p>24 Residuary TUW Allen Eber Proposed Distribution of</p> <p>25 Securities.</p>

<p style="text-align: right;">Page 142</p> <p>1 L. Eber</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And have you seen this version of the</p> <p>5 chart before?</p> <p>6 A. Yes.</p> <p>7 Q. When do you recall first seeing this?</p> <p>8 A. I don't remember.</p> <p>9 Q. Do you see that this table also</p> <p>10 includes distribution numbers for the shares of</p> <p>11 Eber Brothers and Co. stock held by the trust?</p> <p>12 A. Yes.</p> <p>13 Q. Do you recall making any objection to</p> <p>14 the distribution proposed in this chart after you</p> <p>15 saw it?</p> <p>16 A. I don't remember.</p> <p>17 Q. After you saw this chart, do you</p> <p>18 recall contacting anyone and saying you wanted to</p> <p>19 buy the shares of Eber Brothers and Co., Inc.</p> <p>20 stock that were proposed to be distributed to</p> <p>21 Daniel Kleeberg, Lisa Stein and Audrey Hays?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A. I don't remember.</p> <p>24 Q. Please take a look at Exhibit 37 now</p> <p>25 which is a e-mail dated September 15, 2017 sent by</p>	<p style="text-align: right;">Page 144</p> <p>1 L. Eber</p> <p>2 MR. RAMSEY: You can answer that.</p> <p>3 A. Yes.</p> <p>4 Q. And so is it fair to say that as of</p> <p>5 September 15, 2017 you agreed with the proposed</p> <p>6 distribution that Canandaigua National Bank had</p> <p>7 sent to you?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A. No, I don't. This is only to sign a</p> <p>10 release.</p> <p>11 Q. Okay, so what did you understand to be</p> <p>12 the significance of signing or not signing a</p> <p>13 release?</p> <p>14 A. Whatever liability that would waive or</p> <p>15 what have you.</p> <p>16 MR. BROOK: Let's go to the next</p> <p>17 Exhibit 38.</p> <p>18 (Plaintiffs' Exhibit 38, a letter</p> <p>19 dated October 11, 2017 on letterhead for</p> <p>20 Woods Oviatt Gilman LLP addressed to Jim</p> <p>21 Vazzana and me, marked for identification,</p> <p>22 as of this date.)</p> <p>23 Q. Exhibit 38 is a letter dated October</p> <p>24 11, 2017 on letterhead for Woods Oviatt Gilman LLP</p> <p>25 addressed to Jim Vazzana and me.</p>
<p style="text-align: right;">Page 143</p> <p>1 L. Eber</p> <p>2 Jim Vazzana to R. Nischal at CNB, Canandaigua</p> <p>3 National Bank, with yourself as one of the people</p> <p>4 copied on it Bates stamped CNB-PL 0005.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recognize this e-mail?</p> <p>8 A. I assume I saw it. It was sent. I</p> <p>9 was copied on.</p> <p>10 Q. In this e-mail, which was sent by your</p> <p>11 lawyer, it begins by saying "Dear Rita, as you</p> <p>12 know we represent Lester Eber and he and the other</p> <p>13 beneficiaries are reticent to sign a release and</p> <p>14 receipt as submitted. However, he will sign it</p> <p>15 without the release provision."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. So you had talked to your lawyer about</p> <p>19 signing a receipt prior to him sending this</p> <p>20 e-mail; correct?</p> <p>21 MR. RAMSEY: Well, hold on.</p> <p>22 Don't tell him what you talked to your</p> <p>23 lawyer about.</p> <p>24 Q. Did you authorize your lawyer to send</p> <p>25 this e-mail?</p>	<p style="text-align: right;">Page 145</p> <p>1 L. Eber</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Have you seen this letter before?</p> <p>5 A. You know I don't remember. It doesn't</p> <p>6 show me copied on it, but I could have. I don't</p> <p>7 remember.</p> <p>8 Q. And do you recall seeing that there</p> <p>9 were stock powers that were signed by someone from</p> <p>10 Canandaigua National Bank purporting to transfer</p> <p>11 to you shares in Eber Brothers and Co., Inc.?</p> <p>12 A. Could you repeat the question?</p> <p>13 Q. Sure.</p> <p>14 Do you recall seeing that around the</p> <p>15 time of this letter there were stock powers that</p> <p>16 had been signed by someone from Canandaigua</p> <p>17 National Bank and Trust purporting to transfer</p> <p>18 Eber Brothers and Co., Inc. stock to you?</p> <p>19 A. I don't remember.</p> <p>20 Q. Do you know what stock powers are?</p> <p>21 A. Yes.</p> <p>22 Q. What are stock powers?</p> <p>23 A. The ability to vote the stock.</p> <p>24 Q. And how do the stock powers once</p> <p>25 executed get turned into actual voting rights for</p>

<p style="text-align: right;">Page 146</p> <p>1 L. Eber</p> <p>2 the stock?</p> <p>3 A. I don't know.</p> <p>4 Q. Was it your understanding as a result</p> <p>5 of the termination of the Allen Eber Trust and</p> <p>6 distribution of assets by Canandaigua National</p> <p>7 Bank you yourself became a voting common</p> <p>8 shareholder of Eber Brothers and Co., Inc.?</p> <p>9 MR. RAMSEY: Form.</p> <p>10 A. I never -- I don't know. I don't</p> <p>11 remember conversations on that. I just don't</p> <p>12 remember.</p> <p>13 Q. On this document here in this letter</p> <p>14 it refers to copies of stock powers being sent and</p> <p>15 then I will just read the whole paragraph into the</p> <p>16 record so we are all clear. It says "Enclosed</p> <p>17 please find your client's respective copies of the</p> <p>18 stock powers transferring their shares of Eber</p> <p>19 Brothers and Co., Inc. pursuant to Canandaigua</p> <p>20 National Bank and Trust Company's distribution</p> <p>21 schedule. As the bank never had possession of the</p> <p>22 company's stock book or other corporate documents</p> <p>23 and despite requests, the bank has not been</p> <p>24 provided with the same. We were required to</p> <p>25 complete these transfers via these stock powers as</p>	<p style="text-align: right;">Page 148</p> <p>1 L. Eber</p> <p>2 company?</p> <p>3 A. I am not involved. I don't know.</p> <p>4 Q. Whose responsibility was it for Eber</p> <p>5 Brothers and Co., Inc. to take care of the stock</p> <p>6 book registration of stockholders and issuance of</p> <p>7 stock certificates?</p> <p>8 A. I can't remember.</p> <p>9 Q. Do you know where the stock book for</p> <p>10 Eber Brothers and Co., Inc. currently is?</p> <p>11 A. No.</p> <p>12 Q. Is it your understanding that the</p> <p>13 stock book for Eber Brothers and Co., Inc. was</p> <p>14 misplaced for a period of time?</p> <p>15 A. I do not know.</p> <p>16 MR. BROOK: Let's go to the next</p> <p>17 Exhibit 39.</p> <p>18 (Plaintiffs' Exhibit 39, a four-page</p> <p>19 letter dated November 5, 2018 by Paul</p> <p>20 Keneally addressed to Magistrate Judge</p> <p>21 Katherine Parker, marked for identification,</p> <p>22 as of this date.)</p> <p>23 Q. Exhibit 39 is a four-page letter dated</p> <p>24 November 5, 2018 by Paul Keneally addressed to</p> <p>25 Magistrate Judge Katherine Parker.</p>
<p style="text-align: right;">Page 147</p> <p>1 L. Eber</p> <p>2 opposed to issuing new stock certificates. We are</p> <p>3 currently retaining the original stock powers</p> <p>4 which I have affixed to each original stock</p> <p>5 certificate that the bank received when it became</p> <p>6 successor co-trustee. We will continue to do so</p> <p>7 unless and until such time as we are advised as to</p> <p>8 whom these originals should be provided given the</p> <p>9 apparent inability to locate the company's stock</p> <p>10 book and affiliated records. It is my</p> <p>11 understanding that the securities were transferred</p> <p>12 to your client's respective financial institutions</p> <p>13 on September 29th and that the remaining assets</p> <p>14 were electronically transferred last week as</p> <p>15 well."</p> <p>16 Did I read that correctly?</p> <p>17 A. Yes.</p> <p>18 Q. And so do you know what this letter</p> <p>19 was referring to about the apparent inability to</p> <p>20 locate the company's stock book?</p> <p>21 A. What it says there. They couldn't</p> <p>22 find it.</p> <p>23 Q. What is a stock book?</p> <p>24 A. I don't know.</p> <p>25 Q. How does new stock get issued by a</p>	<p style="text-align: right;">Page 149</p> <p>1 L. Eber</p> <p>2 Do you recognize this document?</p> <p>3 A. I don't remember seeing it. Yeah, I</p> <p>4 probably did. I probably was copied and got a</p> <p>5 copy of it. I just don't remember.</p> <p>6 Q. Paul Keneally is the lawyer for you,</p> <p>7 your daughter and the Eber companies in this</p> <p>8 litigation; correct?</p> <p>9 A. Yes.</p> <p>10 Q. And I would like to draw your</p> <p>11 attention to paragraph 3 on this first page. I</p> <p>12 will read it into the record. Mr. Keneally wrote</p> <p>13 to the court in response to a letter by me "It is</p> <p>14 not true that the corporate stock register was</p> <p>15 quote lost. The register is maintained by the</p> <p>16 corporate secretary Wendy Eber who is solely</p> <p>17 responsible for registering valid transfers of</p> <p>18 stock in it. Neither the Allen Eber Trust,</p> <p>19 defined as the trust, nor CNB as one of its</p> <p>20 trustees has any responsibility or role in</p> <p>21 registering stock transfers. The corporate</p> <p>22 secretary never told CNB that the register was</p> <p>23 lost."</p> <p>24 Did you see that?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 150</p> <p>1 L. Eber</p> <p>2 Q. And did you authorize Mr. Keneally to</p> <p>3 make this statement?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. He is my lawyer.</p> <p>6 Q. And does that refresh your</p> <p>7 recollection as to whose responsibility it was to</p> <p>8 deal with the stock book and issue stock</p> <p>9 certificates on behalf of Eber Brothers and Co.,</p> <p>10 Inc.?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. If that's what he says that's what it</p> <p>13 is. He represents me.</p> <p>14 Q. So do you know how looking back at</p> <p>15 Exhibit 38, do you know why the lawyers for</p> <p>16 Canandaigua National Bank appeared to believe that</p> <p>17 the stock book was not able to be located as of</p> <p>18 October 2017?</p> <p>19 A. No.</p> <p>20 Q. And to the best of your knowledge, has</p> <p>21 Wendy Eber always been in possession of the</p> <p>22 company's stock book?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 A. I don't know.</p> <p>25 MR. BROOK: Let's do two more</p>	<p style="text-align: right;">Page 152</p> <p>1 L. Eber</p> <p>2 daughter Wendy as well as you?</p> <p>3 A. He was my lawyer.</p> <p>4 Q. Now do you see the second paragraph</p> <p>5 here. It refers to first two words say my</p> <p>6 clients.</p> <p>7 Do you see that plural?</p> <p>8 A. Yes.</p> <p>9 Q. Who else --</p> <p>10 A. It would be my daughter.</p> <p>11 Q. I would like to point your attention</p> <p>12 now to the substance of the first paragraph which</p> <p>13 I will also read for the record. "Dear Lorisa, I</p> <p>14 trust you received my e-mail of yesterday</p> <p>15 afternoon regarding your inquiry as to the</p> <p>16 corporate stock book of Eber Brothers and Co.,</p> <p>17 Inc. I am fairly confident that they do not have</p> <p>18 it. However, to be sure, Wendy will be in</p> <p>19 Rochester for the fourth of July weekend and will</p> <p>20 double check."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. So your lawyer told counsel for</p> <p>24 Canandaigua National Bank that you and Wendy could</p> <p>25 not locate the corporate stock book; correct?</p>
<p style="text-align: right;">Page 151</p> <p>1 L. Eber</p> <p>2 exhibits. This is 40 and 41.</p> <p>3 (Plaintiffs' Exhibit 40, a e-mail</p> <p>4 dated June 2, 2017 from Jim Vazzana to</p> <p>5 Lorisa LaRocca Bates number CNB-PL 0022,</p> <p>6 marked for identification, as of this date.)</p> <p>7 (Plaintiffs' Exhibit 41, an e-mail</p> <p>8 dated August 18, 2017 from Jim Vazzana to</p> <p>9 Lorisa LaRocca, marked for identification,</p> <p>10 as of this date.)</p> <p>11 Q. Exhibit 40 is a e-mail dated June 2,</p> <p>12 2017 from Jim Vazzana to Lorisa LaRocca Bates</p> <p>13 number CNB-PL 0022.</p> <p>14 Do you recognize that e-mail?</p> <p>15 MR. RAMSEY: You are not suggesting he</p> <p>16 was copied on it; right?</p> <p>17 MR. BROOK: No.</p> <p>18 A. I'm not. I wasn't copied.</p> <p>19 Q. Nonetheless, are you aware that your</p> <p>20 lawyer sent an e-mail along these lines to Lorisa</p> <p>21 LaRocca who was representing Canandaigua National</p> <p>22 Bank?</p> <p>23 A. You know, I think it's possible. I</p> <p>24 don't remember but it is very possible.</p> <p>25 Q. Was Jim Vazzana representing your</p>	<p style="text-align: right;">Page 153</p> <p>1 L. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 A. I don't remember that. It's very</p> <p>4 confusing and I just don't remember.</p> <p>5 Q. Did you have an understanding as to</p> <p>6 why Canandaigua National Bank wanted the corporate</p> <p>7 stock book?</p> <p>8 A. No.</p> <p>9 Q. Please turn to Exhibit 41 which is an</p> <p>10 e-mail dated August 18, 2017 again from Jim</p> <p>11 Vazzana to Lorisa LaRocca this time with you and</p> <p>12 your daughter Wendy copied on it.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. This has Bates numbers CNB-PL 0006.</p> <p>16 And this e-mail reads "Lorisa, have you or your</p> <p>17 client ever found the stock register on Eber</p> <p>18 Brothers Co. My client indicated in June that she</p> <p>19 would make a special trip to Rochester in July to</p> <p>20 see if she could find them. Please advise."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Do you remember this e-mail?</p> <p>24 A. I got it.</p> <p>25 Q. Do you remember seeing it?</p>

<p style="text-align: right;">Page 154</p> <p>1 L. Eber</p> <p>2 A. No, I don't remember it, but I was</p> <p>3 copied on it.</p> <p>4 Q. So is it fair to say that as of mid</p> <p>5 August 2017 neither you nor Wendy knew where the</p> <p>6 stock register was for Eber Brothers and Co.,</p> <p>7 Inc.?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A. I can't give you an answer on that</p> <p>10 because I just do not remember this whole e-mail.</p> <p>11 Q. Have you or Wendy misled Mr. Vazzana</p> <p>12 about where the stock register was for Eber</p> <p>13 Brothers and Co., Inc.?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 A. I never misled Mr. Vazzana on</p> <p>16 anything.</p> <p>17 Q. Did you guys ask Mr. Vazzana to make</p> <p>18 it seem like you did not know where the stock</p> <p>19 register was?</p> <p>20 MR. RAMSEY: Form.</p> <p>21 A. I never had a conversation with him on</p> <p>22 it.</p> <p>23 Q. So are you saying that any</p> <p>24 conversations with Mr. Vazzana about the stock</p> <p>25 register were between Wendy and Mr. Vazzana?</p>	<p style="text-align: right;">Page 156</p> <p>1 L. Eber</p> <p>2 Q. Would you please read aloud the first</p> <p>3 sentence of this letter?</p> <p>4 A. "On behalf of myself, Lisa Stein and</p> <p>5 Daniel Kleeberg representing more than one third</p> <p>6 of the shares I write to request a special meeting</p> <p>7 of the shareholders of Eber Brothers and Co., the</p> <p>8 company pursuant to Article 1 Section 1 of the</p> <p>9 bylaws."</p> <p>10 Q. So you understood from that that the</p> <p>11 purpose of this letter was to request a special</p> <p>12 meeting of the shareholders of Eber Brothers and</p> <p>13 Co., Inc.?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 A. I understand what it says in the</p> <p>16 letter.</p> <p>17 Q. So reading it now you understand that</p> <p>18 purpose; correct?</p> <p>19 A. Mm-hmm, yes.</p> <p>20 Q. And then it says it got three items</p> <p>21 after or -- withdrawn.</p> <p>22 After that first sentence it has a</p> <p>23 list of three items that it says are the purposes</p> <p>24 for the special meeting.</p> <p>25 Do you see that?</p>
<p style="text-align: right;">Page 155</p> <p>1 L. Eber</p> <p>2 A. I think Vazzana was the lawyer with</p> <p>3 counsel.</p> <p>4 MR. RAMSEY: Form.</p> <p>5 Q. Do you know where the stock book or</p> <p>6 stock register for Eber Brothers and Co., Inc. is</p> <p>7 as of right now?</p> <p>8 A. No.</p> <p>9 MR. BROOK: Let's go to Exhibit 42.</p> <p>10 (Plaintiffs' Exhibit 42, a copy of a</p> <p>11 letter dated October 10, 2018 from Audrey</p> <p>12 Hays to Wendy Eber and Lester Eber, marked</p> <p>13 for identification, as of this date.)</p> <p>14 Q. Exhibit 42 is a copy of a letter dated</p> <p>15 October 10, 2018 from Audrey Hays to Wendy Eber</p> <p>16 and Lester Eber.</p> <p>17 Do you recognize this document?</p> <p>18 A. It was sent to me, so I did see it.</p> <p>19 Q. And what do you recall about this</p> <p>20 document?</p> <p>21 A. What you got here, that's it.</p> <p>22 Q. What was the purpose for Miss Hays</p> <p>23 writing to you?</p> <p>24 MR. RAMSEY: Form.</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">Page 157</p> <p>1 L. Eber</p> <p>2 A. Yes.</p> <p>3 Q. And the first one says appointing</p> <p>4 and/or removing directors of the company.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you have any trouble understanding</p> <p>8 what that means?</p> <p>9 A. No.</p> <p>10 Q. The second item is to consider</p> <p>11 amendments to the bylaws so that they conform to</p> <p>12 the current status of the company.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Do you understand what that means?</p> <p>16 A. Yes.</p> <p>17 Q. Item number three. "Such other items</p> <p>18 as the shareholders may deem necessary in</p> <p>19 connection with the above or for the operation of</p> <p>20 the company's business which are subject to the</p> <p>21 control of the shareholders."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you understand what that means?</p> <p>25 A. I don't know what other items means.</p>

40 (Pages 154 - 157)

<p style="text-align: right;">Page 158</p> <p>1 L. Eber</p> <p>2 Q. And what did you do after you received</p> <p>3 this letter?</p> <p>4 A. I don't remember.</p> <p>5 Q. Was a special meeting of the</p> <p>6 shareholders called?</p> <p>7 A. I don't remember.</p> <p>8 Q. When is the last time there were</p> <p>9 elections for directors of Eber Brothers and Co.,</p> <p>10 Inc.?</p> <p>11 A. I don't remember.</p> <p>12 Q. Do you know who the current directors</p> <p>13 of Eber Brothers and Co., Inc. are?</p> <p>14 A. I believe they are Wendy and myself.</p> <p>15 Q. And what is your understanding as to</p> <p>16 how frequently elections for directors have to be</p> <p>17 called?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A. I don't remember.</p> <p>20 Q. Do you recall ever giving a copy of</p> <p>21 the bylaws of Eber Brothers and Co., Inc. to</p> <p>22 anyone from Canandaigua National Bank and Trust?</p> <p>23 A. I don't remember.</p> <p>24 Q. Do you recall ever giving a copy of</p> <p>25 the bylaws of Eber Brothers and Co., Inc. to Dan</p>	<p style="text-align: right;">Page 160</p> <p>1 L. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 A. I didn't say that.</p> <p>4 Q. Well, do you recall --</p> <p>5 A. You have said that. I didn't say it.</p> <p>6 Q. I am asking a question.</p> <p>7 A. You didn't ask a question. You said</p> <p>8 that.</p> <p>9 MR. RAMSEY: All right. Let him ask a</p> <p>10 different question.</p> <p>11 Q. So do you recall whether there are any</p> <p>12 restrictions on the transfer of Eber Brothers and</p> <p>13 Co., Inc. shares that are mentioned on the face of</p> <p>14 the stock certificates for Eber Brothers and Co.,</p> <p>15 Inc. that were issued to the Allen Eber Trust?</p> <p>16 A. Yes. There are.</p> <p>17 Q. What restrictions are noted on the</p> <p>18 certificates?</p> <p>19 A. I don't remember but there are.</p> <p>20 Q. And how do you know that?</p> <p>21 A. Because being a trustee of the estate</p> <p>22 when my sisters died and stock could have been</p> <p>23 picked up by the trust and they were allowed to</p> <p>24 keep it but the company had the right to pick up</p> <p>25 the stock.</p>
<p style="text-align: right;">Page 159</p> <p>1 L. Eber</p> <p>2 Kleeberg, Audrey Hays or Lisa Stein?</p> <p>3 A. No.</p> <p>4 Q. Now it is pursuant to the bylaws of</p> <p>5 Eber Brothers and Co., Inc. that you have said</p> <p>6 that you have the right to acquire the shares that</p> <p>7 would otherwise be distributed to my clients;</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. Had you ever indicated prior to the</p> <p>11 correspondence dated October 31, 2018 that we</p> <p>12 looked at in Exhibit 35 that you believed that</p> <p>13 there were any restrictions against transferring</p> <p>14 Eber Brothers and Co., Inc. shares to Dan</p> <p>15 Kleeberg, Lisa Stein or Audrey Hays?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 A. Could you repeat that?</p> <p>18 MR. BROOK: Sure.</p> <p>19 (Record read.)</p> <p>20 A. I don't remember.</p> <p>21 Q. And to the best of your recollection,</p> <p>22 the stock certificates of Eber Brothers and Co.,</p> <p>23 Inc. issued to the Allen Eber Trust did not</p> <p>24 indicate there were any restrictions on the</p> <p>25 transfer of the shares; correct?</p>	<p style="text-align: right;">Page 161</p> <p>1 L. Eber</p> <p>2 Q. I am sorry.</p> <p>3 So you are referring to the times when</p> <p>4 both of your sisters died?</p> <p>5 A. Yes.</p> <p>6 Q. And at that point it was your</p> <p>7 understanding that the company Eber Brothers and</p> <p>8 Co., Inc. could have acquired the stock instead of</p> <p>9 the stock being inherited by your sister's</p> <p>10 children?</p> <p>11 A. That was my understanding.</p> <p>12 Q. How did you come to have that</p> <p>13 understanding?</p> <p>14 A. From my lawyer Mr. Gumaer.</p> <p>15 Q. And he told you that at the time of</p> <p>16 your sister Mildred's death?</p> <p>17 DI MR. RAMSEY: Don't answer that.</p> <p>18 That's privileged. He is not talking about</p> <p>19 any conversation. Whatever the</p> <p>20 understanding was, that's what he said. He</p> <p>21 is not talking about what his conversations</p> <p>22 were.</p> <p>23 MR. BROOK: I am just trying to get</p> <p>24 the time on this.</p> <p>25 MR. CALIHAN: I'm sorry.</p>

<p style="text-align: right;">Page 162</p> <p>1 L. Eber</p> <p>2 You are trying to get?</p> <p>3 MR. BROOK: The timing on this.</p> <p>4 BY MR. BROOK:</p> <p>5 Q. So your understanding that you just</p> <p>6 described is an understanding that you had at or</p> <p>7 shortly after the time of your sister Mildred's</p> <p>8 death; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And do you remember having that</p> <p>11 understanding in 1973?</p> <p>12 A. I remember it was that I was told that</p> <p>13 by Mr. --</p> <p>14 MR. CALIHAN: You don't want to</p> <p>15 disclose the substance of what was said</p> <p>16 between you and Mr. Gumaer for legal advice.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 Q. To be clear, you do have the right to</p> <p>19 disclose it if you choose.</p> <p>20 A. I will listen to my counsel.</p> <p>21 Q. Or Mr. Gumaer's counsel.</p> <p>22 A. Mr. Gumaer's counsel. My lawyer's</p> <p>23 counsel.</p> <p>24 Q. Did you know Rob Calihan before this</p> <p>25 lawsuit was filed?</p>	<p style="text-align: right;">Page 164</p> <p>1 L. Eber</p> <p>2 Q. Before we broke you had testified that</p> <p>3 it was your understanding that you had had the</p> <p>4 right to acquire your sister's shares instead of</p> <p>5 those shares being distributed to your nieces and</p> <p>6 nephew; correct?</p> <p>7 A. Yes.</p> <p>8 Me personally acquire or the company</p> <p>9 acquire?</p> <p>10 Q. So clarify that.</p> <p>11 What was your understanding of who</p> <p>12 could acquire the shares?</p> <p>13 A. I am not quite sure. It could have</p> <p>14 been either. I don't have an answer for you on</p> <p>15 that.</p> <p>16 Q. Whether it was you or the company, why</p> <p>17 didn't you attempt to acquire the shares of your</p> <p>18 sister's instead of having those shares be passed</p> <p>19 to your nieces and nephew?</p> <p>20 A. I don't have an answer. I think</p> <p>21 that's what my father wanted. I think you would</p> <p>22 have to ask -- he is not here my lawyer Mr.</p> <p>23 Gumaer. I don't have an answer for that because I</p> <p>24 had nothing to do with his will or what have you.</p> <p>25 Q. Are you saying that Mr. Gumaer was the</p>
<p style="text-align: right;">Page 163</p> <p>1 L. Eber</p> <p>2 A. Maybe. Not well.</p> <p>3 Q. Had you ever retained Rob Calihan to</p> <p>4 represent you?</p> <p>5 A. No.</p> <p>6 Q. Have you asked Rob Calihan for any</p> <p>7 legal advice in connection with this lawsuit?</p> <p>8 A. He is not my lawyer. Underberg and</p> <p>9 Kessler is my lawyer.</p> <p>10 Q. You have at a previous deposition</p> <p>11 passed notes to Mr. Calihan; correct?</p> <p>12 A. If you are saying it, I don't</p> <p>13 remember. You are very observant.</p> <p>14 MR. BROOK: Let's go ahead and stop</p> <p>15 here for media reasons.</p> <p>16 THE VIDEOGRAPHER: This marks the end</p> <p>17 of media unit number 3 in the videotaped</p> <p>18 deposition of Lester Eber. We are going off</p> <p>19 the record. The time is 1:47.</p> <p>20 (Recess taken.)</p> <p>21 THE VIDEOGRAPHER: This marks the</p> <p>22 beginning of media unit number four in the</p> <p>23 videotaped deposition of Lester Eber. We</p> <p>24 are going on the record. The time is 1:57.</p> <p>25 BY MR. BROOK:</p>	<p style="text-align: right;">Page 165</p> <p>1 L. Eber</p> <p>2 person who made the decision about whether or not</p> <p>3 to acquire the shares?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 MR. CALIHAN: Objection to form.</p> <p>6 A. I think there was nothing I did there</p> <p>7 that I didn't discuss with Mr. Gumaer.</p> <p>8 Q. But who actually made the decision not</p> <p>9 to try to acquire the shares that had belonged to</p> <p>10 your sisters?</p> <p>11 A. I don't remember.</p> <p>12 Q. After this lawsuit was filed in</p> <p>13 December 2016, did you retain counsel right away?</p> <p>14 A. Yes.</p> <p>15 Q. Who did you retain?</p> <p>16 A. Paul Keneally, Underberg and Kessler.</p> <p>17 Q. And why did you choose Paul Keneally</p> <p>18 with Underberg and Kessler?</p> <p>19 A. Because he had been working with us</p> <p>20 and he handled our legal affairs.</p> <p>21 Q. Did Paul Keneally already have</p> <p>22 familiarity with some of the transactions at issue</p> <p>23 in this case?</p> <p>24 MR. RAMSEY: Form.</p> <p>25 A. I don't remember.</p>

<p style="text-align: right;">Page 166</p> <p>1 L. Eber</p> <p>2 Q. Who is the lawyer that you hired to</p> <p>3 represent Alexbay when Alexbay foreclosed on the</p> <p>4 debt that you had assigned to it?</p> <p>5 A. Michael Beyma.</p> <p>6 Q. Which firm is he associated with?</p> <p>7 A. Underberg and Kessler.</p> <p>8 Q. Was Paul Keneally involved in that at</p> <p>9 all?</p> <p>10 A. Not that I know.</p> <p>11 Q. Did Paul Keneally introduce you to Mr.</p> <p>12 Beyma?</p> <p>13 A. I don't remember.</p> <p>14 Q. After this lawsuit was filed, did you</p> <p>15 take any steps to attempt to prevent plaintiffs</p> <p>16 from potentially obtaining control over the Eber</p> <p>17 Brothers Wine and Liquor Company?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A. I don't remember.</p> <p>20 Q. You did understand that one of the</p> <p>21 things that plaintiffs requested in this lawsuit</p> <p>22 from the beginning was to take a controlling stake</p> <p>23 in the Eber Brothers and Co., Inc. company;</p> <p>24 correct?</p> <p>25 A. I don't remember.</p>	<p style="text-align: right;">Page 168</p> <p>1 L. Eber</p> <p>2 Do you see that?</p> <p>3 A. Which page are you on?</p> <p>4 MR. RAMSEY: First page.</p> <p>5 Q. The first page.</p> <p>6 A. Yes.</p> <p>7 Q. And on the second page you can see it</p> <p>8 is dated as of February 15, 2017.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. What is your understanding of what it</p> <p>12 means to have a document dated or executed as of a</p> <p>13 particular date?</p> <p>14 A. I don't know.</p> <p>15 Q. Is it your understanding that the</p> <p>16 document was actually executed on that date?</p> <p>17 A. I do not know.</p> <p>18 Q. Are you familiar with the term of an</p> <p>19 effective date?</p> <p>20 A. No.</p> <p>21 Q. Take a look at the next page Bates 3</p> <p>22 of the document that is the page that's signed by</p> <p>23 both you and Wendy dated February 15, 2017;</p> <p>24 correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 167</p> <p>1 L. Eber</p> <p>2 MR. BROOK: Let's mark this next one</p> <p>3 Exhibit 43.</p> <p>4 (Plaintiffs' Exhibit 43, a series of</p> <p>5 documents that were produced together Bates</p> <p>6 range EB 00001166 through 1173, marked for</p> <p>7 identification, as of this date.)</p> <p>8 Q. Exhibit 43 is a series of documents</p> <p>9 that were produced together. The Bates range EB</p> <p>10 00001166 through 1173.</p> <p>11 Do you recognize these documents?</p> <p>12 A. I believe I have seen them.</p> <p>13 Q. And these are documents concerning the</p> <p>14 Eber Brothers Wine and Liquor Corp.; is that</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. The various documents are signed by</p> <p>18 either you or Wendy or both of you; correct?</p> <p>19 A. Yes.</p> <p>20 Q. Why were these -- and let me step back</p> <p>21 one more.</p> <p>22 So you see the first document is</p> <p>23 referred to as the written consent of the sole</p> <p>24 member of the board of directors of Eber Brothers</p> <p>25 Wine and Liquor Corporation.</p>	<p style="text-align: right;">Page 169</p> <p>1 L. Eber</p> <p>2 Q. So Wendy signed on behalf of Eber</p> <p>3 Brothers Wine and Liquor and you signed on behalf</p> <p>4 of yourself; right?</p> <p>5 A. Yes.</p> <p>6 Q. And then flip forward one, two, three,</p> <p>7 four pages to the second to last page.</p> <p>8 You see there is a signature by Wendy</p> <p>9 Eber as assistant secretary there?</p> <p>10 A. Yes.</p> <p>11 Q. And this one is dated February 14,</p> <p>12 2017?</p> <p>13 A. Yes.</p> <p>14 Q. That's one day earlier than the first</p> <p>15 two documents we saw; correct?</p> <p>16 A. The first one says February 14th also.</p> <p>17 Q. I am sorry.</p> <p>18 So it is the same day as the first</p> <p>19 document but one day before the second; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And then the very last page of this</p> <p>22 exhibit page 8, that one is signed by you as the</p> <p>23 written consent of the stockholders of Eber</p> <p>24 Brothers Wine and Liquor Corporation signed by you</p> <p>25 as president of Eber Brothers and Co., Inc.</p>

<p style="text-align: right;">Page 170</p> <p>1 L. Eber</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Does that refresh your recollection</p> <p>5 that you still are the president of Eber Brothers</p> <p>6 and Co., Inc.?</p> <p>7 A. Yes.</p> <p>8 Q. And you see that one is dated as of</p> <p>9 February 14, 2017; correct?</p> <p>10 A. Yes.</p> <p>11 Q. So were you and Wendy you actually got</p> <p>12 together on Valentine's Day and executed these</p> <p>13 documents?</p> <p>14 A. I don't remember.</p> <p>15 Q. Is it possible these documents were</p> <p>16 dated as of a different date than the date when</p> <p>17 you were actually signing them?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A. I don't remember.</p> <p>20 Q. Who prepared these documents for you?</p> <p>21 A. I don't know.</p> <p>22 Q. Were they prepared by you?</p> <p>23 A. No.</p> <p>24 Q. Did Wendy prepare these?</p> <p>25 A. I don't know. Could have been a</p>	<p style="text-align: right;">Page 172</p> <p>1 L. Eber</p> <p>2 A. I think he did. I just don't remember</p> <p>3 the exact date of it.</p> <p>4 Q. And then going forward from the back</p> <p>5 the longest document is from pages 4 to 7. That</p> <p>6 one is called Certificate of Amendment of the</p> <p>7 Certificate of Incorporation of Eber Brothers Wine</p> <p>8 and Liquor Corporation.</p> <p>9 Do you see that?</p> <p>10 A. It is page 2?</p> <p>11 MR. RAMSEY: Starts at page 4.</p> <p>12 A. Page 4.</p> <p>13 MR. RAMSEY: This one (indicating).</p> <p>14 One more (indicating).</p> <p>15 A. Yes.</p> <p>16 Q. So once -- let me withdraw that.</p> <p>17 Why was Wendy signing this document to</p> <p>18 amend the certificate of incorporation?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A. I don't know. I don't remember. I</p> <p>21 just don't.</p> <p>22 Q. So you do not recall that the</p> <p>23 certificate of amendment of the certificate of</p> <p>24 incorporation was done in order to create a new</p> <p>25 class of junior preferred stock which had voting</p>
<p style="text-align: right;">Page 171</p> <p>1 L. Eber</p> <p>2 lawyer. I don't know.</p> <p>3 Q. Did Eber Brothers and Co., Inc. or</p> <p>4 Eber Brothers Wine and Liquor Corp. hire any</p> <p>5 lawyers in connection with these documents?</p> <p>6 A. I don't know.</p> <p>7 Q. What was the purpose of these</p> <p>8 documents being executed on February 14th and 15,</p> <p>9 2017?</p> <p>10 A. I don't remember.</p> <p>11 Q. Looking at the last page first, that</p> <p>12 document reflects your consent on behalf of Eber</p> <p>13 Brothers and Co., Inc. to the appointment of Wendy</p> <p>14 Eber as the sole director of Eber Brothers Wine</p> <p>15 and Liquor Corp.; correct?</p> <p>16 A. Yes.</p> <p>17 Q. And was it your understanding that</p> <p>18 Eber Brothers Wine and Liquor Corp. was permitted</p> <p>19 to have just a single director?</p> <p>20 MR. RAMSEY: Form.</p> <p>21 A. I don't know. I don't know.</p> <p>22 Q. Do you recall that at approximately</p> <p>23 the same time mid February 2017 Mike Gumaer</p> <p>24 resigned as director of Eber Brothers and Co.,</p> <p>25 Inc. and Eber Brothers Wine and Liquor Corp.?</p>	<p style="text-align: right;">Page 173</p> <p>1 L. Eber</p> <p>2 rights?</p> <p>3 A. I don't -- I can't -- I just don't</p> <p>4 know.</p> <p>5 Q. Do you have an understanding as to the</p> <p>6 distinction between common stock and preferred</p> <p>7 stock?</p> <p>8 A. Yes.</p> <p>9 Q. What's the distinction?</p> <p>10 A. Common is usually non-voting and</p> <p>11 preferred is voting or dividend paying.</p> <p>12 Q. You mean it the other way around,</p> <p>13 common shares are voting?</p> <p>14 A. I have seen common that's non-voting.</p> <p>15 Q. In a liquidation of a company, which</p> <p>16 shares get paid first; preferred or common?</p> <p>17 A. I believe preferred.</p> <p>18 Q. And it is your understanding that the</p> <p>19 preferred stock typically has voting rights?</p> <p>20 A. It could. It could or could not. I</p> <p>21 don't know.</p> <p>22 Q. Do you know if Eber Brothers Wine and</p> <p>23 Liquor Corporation had any preferred stock with</p> <p>24 voting rights prior to the execution of this</p> <p>25 amendment?</p>

<p style="text-align: right;">Page 174</p> <p>1 L. Eber</p> <p>2 A. I do not know.</p> <p>3 Q. Prior to February 2017, did you have</p> <p>4 or did you own any preferred stock in Eber</p> <p>5 Brothers Wine and Liquor Corporation?</p> <p>6 A. Not that I can remember.</p> <p>7 Q. After February 2017 did you own any</p> <p>8 preferred stock in Eber Brothers Wine and Liquor</p> <p>9 Corporation?</p> <p>10 A. I would have to look at this closer.</p> <p>11 I don't remember.</p> <p>12 Q. Flip forward one page to page 3.</p> <p>13 Although it has no title it appears to be some</p> <p>14 kind of a corporate decision. It says, I will</p> <p>15 just read the whole thing because it is short</p> <p>16 "Eber Brothers Wine and Liquor Corporation,</p> <p>17 defined as the corporation, hereby issues to</p> <p>18 Lester Eber 750 shares of class B junior preferred</p> <p>19 stock par value fifty dollars per share, defined</p> <p>20 as the shares, of the corporation in consideration</p> <p>21 of Lester Eber's agreement hereby to reimburse the</p> <p>22 corporation at its request for up to 37,500</p> <p>23 dollars of expenses incurred or to be incurred by</p> <p>24 the corporation in connection with its general</p> <p>25 operations. Upon the execution and delivery of</p>	<p style="text-align: right;">Page 176</p> <p>1 L. Eber</p> <p>2 A. Yes.</p> <p>3 Q. And this lawsuit you understand is one</p> <p>4 that is brought by plaintiffs in their capacity,</p> <p>5 through their derivative capacity on behalf of the</p> <p>6 Eber Brothers Wine and Liquor Corporation;</p> <p>7 correct?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A. You are speaking legal language that I</p> <p>10 don't understand, so I don't understand. I don't.</p> <p>11 I don't understand you.</p> <p>12 Q. Have you ever heard of a derivative</p> <p>13 shareholder lawsuit?</p> <p>14 A. I have heard of it. I don't know much</p> <p>15 about it.</p> <p>16 Q. Are you someone who has ever invested</p> <p>17 in publicly traded stock? Is that a yes?</p> <p>18 A. I don't know much about it. I don't</p> <p>19 know much about it.</p> <p>20 Q. So you have never received mailers</p> <p>21 from law firms or courts saying --</p> <p>22 A. No.</p> <p>23 Q. -- there is a class and a derivative</p> <p>24 lawsuit is involved?</p> <p>25 A. I have received that, but I don't know</p>
<p style="text-align: right;">Page 175</p> <p>1 L. Eber</p> <p>2 this agreement by the parties hereto, the shares</p> <p>3 will be duly authorized, validly issued, fully</p> <p>4 paid and non-assessable without further action by</p> <p>5 either party."</p> <p>6 Do you see that?</p> <p>7 A. Yes, I see that.</p> <p>8 Q. Having gone through that, does it</p> <p>9 refresh your recollection that through some</p> <p>10 corporate mechanisms you have acquired 750 shares</p> <p>11 of class B junior preferred stock in Eber Brothers</p> <p>12 Wine and Liquor Corporation?</p> <p>13 A. Yes.</p> <p>14 Q. And why did that transaction occur?</p> <p>15 A. I don't remember.</p> <p>16 Q. What were the expenses incurred in</p> <p>17 connection with Eber Brothers Wine and Liquor's</p> <p>18 general operations that required your financing?</p> <p>19 A. I don't remember.</p> <p>20 Q. Did you ask?</p> <p>21 A. I don't remember. I just don't. My</p> <p>22 time is spent keeping Connecticut afloat and the</p> <p>23 job I have working in New York.</p> <p>24 Q. You also have had to spend time and</p> <p>25 money defending against this lawsuit; correct?</p>	<p style="text-align: right;">Page 177</p> <p>1 L. Eber</p> <p>2 if it was under derivative name or class actions</p> <p>3 suits I believe.</p> <p>4 Q. It is your understanding; right, that</p> <p>5 as a shareholder of a corporation a shareholder</p> <p>6 may attempt to assert the rights of the</p> <p>7 corporation in the event that the officers or</p> <p>8 directors of the corporation are harming the</p> <p>9 company; right?</p> <p>10 MR. RAMSEY: Form.</p> <p>11 A. You know, I don't have an answer for</p> <p>12 you on that.</p> <p>13 Q. It was your understanding after this</p> <p>14 lawsuit was filed that plaintiffs sought to have</p> <p>15 the shares of Eber Metro returned to Eber Brothers</p> <p>16 Wine and Liquor Corp. from Alexbay; right?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A. I don't remember that.</p> <p>19 Q. But as of this time you are aware that</p> <p>20 is one of the items of relief that the plaintiffs</p> <p>21 are seeking; right?</p> <p>22 A. That's what you are mentioning now.</p> <p>23 If that's what you are saying they are doing,</p> <p>24 that's what's going on.</p> <p>25 Q. You never heard that before I</p>

<p style="text-align: right;">Page 178</p> <p>1 L. Eber</p> <p>2 mentioned it to you?</p> <p>3 A. I could have. I said I don't</p> <p>4 remember.</p> <p>5 Q. Why did you want to have 750 shares of</p> <p>6 voting preferred stock in Eber Brothers Wine and</p> <p>7 Liquor Corporation?</p> <p>8 A. I think you would have to ask my</p> <p>9 lawyer.</p> <p>10 Q. So is this something that you did</p> <p>11 because your lawyer told you to do it?</p> <p>12 A. Yes.</p> <p>13 Q. And which lawyer are you referring to?</p> <p>14 A. I would say John Herbert.</p> <p>15 Q. Going back now to the first document,</p> <p>16 this is one signed by Wendy Eber February 15th,</p> <p>17 you see this is just her authorizing the other</p> <p>18 documents that we had just looked at; correct?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 MR. BROOK: Well, I will rephrase</p> <p>21 that.</p> <p>22 Q. Among other things it authorized this</p> <p>23 certificate of amendment and the purchase</p> <p>24 agreement that we had just looked at; correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 180</p> <p>1 L. Eber</p> <p>2 Q. I am going to move to something very</p> <p>3 different for a moment so you can put that</p> <p>4 document down. Thank you.</p> <p>5 A lawsuit was filed by PBGC in 2015 to</p> <p>6 terminate or to get a judicial order approving a</p> <p>7 determination of the ERISA pension plan that had</p> <p>8 been created and managed by Eber Brothers Wine and</p> <p>9 Liquor Corp.; correct.</p> <p>10 A. If that's the date. I don't remember</p> <p>11 the date, but that there was one.</p> <p>12 Q. But you remember a lawsuit along the</p> <p>13 lines that I just described; yes?</p> <p>14 A. Yes.</p> <p>15 Q. That lawsuit was ultimately settled</p> <p>16 with PBGC; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And it was settled shortly after this</p> <p>19 lawsuit that we are here today was filed; correct?</p> <p>20 A. I don't remember the date and what</p> <p>21 have you.</p> <p>22 Q. Do you remember what the monetary</p> <p>23 terms of the settlement were?</p> <p>24 A. Some of it.</p> <p>25 Q. Which terms do you remember?</p>
<p style="text-align: right;">Page 179</p> <p>1 L. Eber</p> <p>2 Q. Do you know why Wendy executed this</p> <p>3 consent document?</p> <p>4 A. I said I don't know. You would have</p> <p>5 to ask my lawyer.</p> <p>6 Q. Do you recall that in approximately on</p> <p>7 February 11, 2011 you executed the document</p> <p>8 transferring debt that was owed -- let me</p> <p>9 withdraw.</p> <p>10 Do you recall that in February 2011</p> <p>11 Eber Brothers Wine and Liquor Corporation assigned</p> <p>12 debt that it owed to you to Eber Metro?</p> <p>13 A. I don't remember.</p> <p>14 Q. Plaintiffs' Exhibit 17, that is the</p> <p>15 document entitled Debt Assumption Agreement.</p> <p>16 Do you have that in front of you?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recognize that document?</p> <p>19 A. Yes.</p> <p>20 Q. Why was that document executed?</p> <p>21 A. I don't remember.</p> <p>22 Q. Why did Eber Metro assume the debt</p> <p>23 owed to you by Eber Brothers Wine and Liquor</p> <p>24 Corp.?</p> <p>25 A. I don't remember.</p>	<p style="text-align: right;">Page 181</p> <p>1 L. Eber</p> <p>2 A. My pension plan that I gave up.</p> <p>3 Q. Anything else?</p> <p>4 A. I gave up 1.4 million to the plan.</p> <p>5 Other members of the company no one else. They</p> <p>6 are getting money from the plan because we were</p> <p>7 able to settle this.</p> <p>8 Q. And in addition to giving up your</p> <p>9 pension there was also a two million dollar</p> <p>10 payment to PBGC?</p> <p>11 A. That's correct, yes.</p> <p>12 Q. Who made that payment?</p> <p>13 A. It was -- I don't know the exact</p> <p>14 thing. It came from the Connecticut.</p> <p>15 Q. So Eber Connecticut --</p> <p>16 A. Or it came from -- it could have come</p> <p>17 from Eber Brothers Metro. I don't remember who.</p> <p>18 I don't want to give you an answer because I don't</p> <p>19 want to give you the wrong answer. I don't</p> <p>20 remember.</p> <p>21 RQ MR. BROOK: Since I think neither</p> <p>22 witness today or yesterday can testify, I am</p> <p>23 putting in a request for documentation</p> <p>24 sufficient to show which entity or entities</p> <p>25 paid the settlement funds to PBGC. Yeah,</p>

<p style="text-align: right;">Page 182</p> <p>1 L. Eber</p> <p>2 that sounds right.</p> <p>3 MR. RAMSEY: I understand your</p> <p>4 request.</p> <p>5 Q. And in exchange for giving up your</p> <p>6 pension and a two million dollar payment, PBGC</p> <p>7 agreed that it would not attempt to impose any</p> <p>8 liens to satisfy unpaid pension plan obligations</p> <p>9 against Eber Connecticut or Eber Metro; correct?</p> <p>10 A. I believe so.</p> <p>11 Q. Do you know why PBGC was trying to</p> <p>12 impose liens on Eber Connecticut or Eber Metro?</p> <p>13 MR. RAMSEY: Form.</p> <p>14 A. To collect moneys for the termination</p> <p>15 of the plan.</p> <p>16 Q. And PBGC did that even though years</p> <p>17 before it filed suit Eber Metro had been</p> <p>18 transferred away from Eber Brothers Wine and</p> <p>19 Liquor Corp.; correct?</p> <p>20 A. That's correct.</p> <p>21 Q. So is it your understanding that PBGC</p> <p>22 was seeking to have the court endorse a plan</p> <p>23 termination date that was early enough that it</p> <p>24 could enforce pension plan obligations on</p> <p>25 subsidiaries that were controlled by Eber Brothers</p>	<p style="text-align: right;">Page 184</p> <p>1 L. Eber</p> <p>2 would be potentially on the hook or liable for</p> <p>3 pension plan funding obligations?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. It's possible. I just don't remember</p> <p>6 it, but it is very possible.</p> <p>7 Q. Isn't it correct it was based upon</p> <p>8 trying to get the percentage of ownership of Eber</p> <p>9 Connecticut below that percentage threshold; that</p> <p>10 was the real reason why six percent of Eber</p> <p>11 Connecticut was sold to Polebridge Bowman?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. Not that I know of. I was not</p> <p>14 involved in that.</p> <p>15 Q. So it was just a coincidence then that</p> <p>16 after the Polebridge Bowman transaction the</p> <p>17 percentage ownership of Eber Connecticut by Eber</p> <p>18 Metro was 79 percent; is that right?</p> <p>19 MR. RAMSEY: Form. That's not what he</p> <p>20 testified to.</p> <p>21 A. That's not what my affidavit I believe</p> <p>22 that he wanted ten percent originally. We got him</p> <p>23 down to six percent.</p> <p>24 Q. Well, ten percent would have looked a</p> <p>25 little less obviously fishy; right?</p>
<p style="text-align: right;">Page 183</p> <p>1 L. Eber</p> <p>2 Wine and Liquor Corp. as of the date termination</p> <p>3 they were trying to choose?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. Yes.</p> <p>6 Q. And they chose the date or they were</p> <p>7 attempting to choose the date of April 30, 2010;</p> <p>8 correct?</p> <p>9 A. I don't remember the date.</p> <p>10 Q. It was a date before the sale of six</p> <p>11 percent of Eber Connecticut to Polebridge Bowman;</p> <p>12 correct?</p> <p>13 A. I don't remember that.</p> <p>14 Q. Do you remember that under the ERISA</p> <p>15 rules in place there was a certain threshold of</p> <p>16 ownership of a subsidiary for when a subsidiary</p> <p>17 would be considered part of the controlled group?</p> <p>18 A. I am not --</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A. I am not an ERISA lawyer.</p> <p>21 Q. Do you remember -- I am not asking if</p> <p>22 you are an ERISA lawyer. Just if you had an</p> <p>23 understanding that the percentage of ownership of</p> <p>24 a subsidiary by a company that was sponsoring a</p> <p>25 plan was relevant as to whether that subsidiary</p>	<p style="text-align: right;">Page 185</p> <p>1 L. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 A. I didn't say that.</p> <p>4 MR. CALIHAN: Objection to form.</p> <p>5 Q. When you made loans to Eber Brothers</p> <p>6 Wine and Liquor Corp. and Eber Metro, did you get</p> <p>7 board approval for those loans and their terms?</p> <p>8 A. You would have to ask my lawyer on</p> <p>9 that. I believe so.</p> <p>10 Q. And do you know whether that board</p> <p>11 approval was obtained prior to the loans being</p> <p>12 made?</p> <p>13 A. You know, I don't -- it goes back so</p> <p>14 long I just don't remember. I would suggest you</p> <p>15 talk to the lawyers involved.</p> <p>16 MR. RAMSEY: (Indecipherable. Talking</p> <p>17 at the same time as witness.)</p> <p>18 A. I don't know. I don't remember it.</p> <p>19 Q. Now when you sold or you agreed to</p> <p>20 sell six percent of Eber Connecticut to Polebridge</p> <p>21 Bowman, you knew that Polebridge Bowman was a</p> <p>22 company created and controlled entirely by Glenn</p> <p>23 Sturm; right?</p> <p>24 A. Yes.</p> <p>25 Q. And what was the relationship between</p>

<p style="text-align: right;">Page 186</p> <p>1 L. Eber</p> <p>2 Glenn Sturm and the Eber companies at that time?</p> <p>3 A. He was a legal consultant.</p> <p>4 Q. Did he do anything else for them?</p> <p>5 A. Well, he helped advise them in trying</p> <p>6 to turn around a company that was headed for</p> <p>7 liquidation.</p> <p>8 Q. And is it correct that he agreed to</p> <p>9 provide those services at a certain point only if</p> <p>10 you agreed that his company Polebridge Bowman</p> <p>11 could acquire six percent of Eber Connecticut?</p> <p>12 A. That's what was finally resolved. The</p> <p>13 way it was resolved.</p> <p>14 Q. And how was the price determined for</p> <p>15 that six percent interest?</p> <p>16 A. I don't know.</p> <p>17 Q. You weren't involved in that?</p> <p>18 A. No.</p> <p>19 Q. Who was?</p> <p>20 A. It would be the lawyers.</p> <p>21 Q. What did the lawyers know about how to</p> <p>22 price Eber Connecticut stock?</p> <p>23 A. I don't know. I think it's -- I don't</p> <p>24 know. I don't want to comment on something I</p> <p>25 don't know and it might have been more than the</p>	<p style="text-align: right;">Page 188</p> <p>1 L. Eber</p> <p>2 know the mechanics or anything else about it.</p> <p>3 Q. And it is your testimony that you also</p> <p>4 don't know how the six percent sale was negotiated</p> <p>5 with Polebridge Bowman; correct?</p> <p>6 A. If I -- I don't remember and I do not</p> <p>7 remember being involved in it.</p> <p>8 Q. Would you characterize the sale of the</p> <p>9 stock -- I am sorry.</p> <p>10 Would you characterize the sale of six</p> <p>11 percent of Eber Connecticut membership units to</p> <p>12 Polebridge Bowman as a free market transaction?</p> <p>13 MR. RAMSEY: Form.</p> <p>14 A. What is a free market transaction?</p> <p>15 Q. What is your understanding of what</p> <p>16 that means?</p> <p>17 A. I am asking you. I don't know. I am</p> <p>18 asking you. You asked me the question and I want</p> <p>19 you to explain to me what a free market</p> <p>20 transaction is so I can answer you.</p> <p>21 Q. Sure.</p> <p>22 So I have now moved on past that</p> <p>23 question and my question to you is: What is your</p> <p>24 understanding of what it means to have a</p> <p>25 transaction be done through the free market?</p>
<p style="text-align: right;">Page 187</p> <p>1 L. Eber</p> <p>2 lawyers. I was not involved in that.</p> <p>3 Q. Did Andy Eder or anyone else from</p> <p>4 Eder-Goodman have any involvement in the pricing</p> <p>5 of the Polebridge Bowman six percent?</p> <p>6 A. Not that I know of.</p> <p>7 Q. Was the pricing of the Polebridge</p> <p>8 Bowman six percent transaction ultimately</p> <p>9 disclosed to Andy Eder and Eder-Goodman?</p> <p>10 A. I don't know.</p> <p>11 Q. Did you have any discussions with</p> <p>12 anyone from Eder-Goodman about the Polebridge</p> <p>13 Bowman six percent?</p> <p>14 A. I did not.</p> <p>15 Q. Did someone else?</p> <p>16 A. I don't know.</p> <p>17 Q. Was it your understanding that</p> <p>18 Eder-Goodman had any rights of first refusal with</p> <p>19 respect to the sale of six percent?</p> <p>20 A. I don't know.</p> <p>21 Q. Did you ever attempt to put the six</p> <p>22 percent that was going to be sold to Polebridge</p> <p>23 Bowman out to auction in a market style auction?</p> <p>24 A. I was not involved in any of that. I</p> <p>25 was aware of the stock and that's it. I didn't</p>	<p style="text-align: right;">Page 189</p> <p>1 L. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 If you have an understanding.</p> <p>4 A. I don't have an understanding of it.</p> <p>5 Q. Why did you transfer debts that were</p> <p>6 owed to you by Eber Metro to Alexbay?</p> <p>7 A. To Alexbay because it was my personal</p> <p>8 hold company and on advice of counsel.</p> <p>9 Q. And after you did that Alexbay on your</p> <p>10 authority made a proposal to Eber Metro to accept</p> <p>11 Eber Metro's shares in lieu of other methods of</p> <p>12 foreclosing on the unpaid debt; correct?</p> <p>13 A. You know, I don't remember the</p> <p>14 mechanics, but I know everything that was done was</p> <p>15 to clean up the balance sheet and to transfer debt</p> <p>16 into assets so that we could get a bank loan to</p> <p>17 run the business. We were in dire straits and we</p> <p>18 needed a bank to be able to run a business and pay</p> <p>19 our suppliers.</p> <p>20 Q. And so you were trying to reduce the</p> <p>21 amount of debt that was weighing down the company;</p> <p>22 correct?</p> <p>23 A. And clean up the balance sheet so that</p> <p>24 a bank would be interested in lending us money.</p> <p>25 Q. So in other words, this didn't affect</p>

<p style="text-align: right;">Page 190</p> <p>1 L. Eber</p> <p>2 any debts that were owed directly by Eber</p> <p>3 Connecticut; correct?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. I don't -- I can't give you an answer.</p> <p>6 I don't -- I would like to give you an answer but</p> <p>7 I don't have an answer for you.</p> <p>8 Q. So was it your understanding that Eber</p> <p>9 Connecticut was weighed down by the debt of Eber</p> <p>10 Brothers Wine and Liquor Corp.?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. Eber Wine and Liquor Corp. yeah, it</p> <p>13 could have -- it didn't help it. If it cleaned up</p> <p>14 the debt and made a cleaner statement so we could</p> <p>15 go to a bank and they could lend us money based on</p> <p>16 the inventory or receivables of Connecticut.</p> <p>17 Q. And what were the debts that Eber</p> <p>18 Brothers Wine and Liquor Corp. had at the time</p> <p>19 that you were trying to clean up the balance</p> <p>20 sheet?</p> <p>21 A. I don't remember.</p> <p>22 Q. There was PBGC; right?</p> <p>23 A. Yes.</p> <p>24 Q. There was the Teamsters?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 192</p> <p>1 L. Eber</p> <p>2 Q. Exhibit 44 is a copy of a summons and</p> <p>3 complaint dated February 21, 2012 bearing Bates</p> <p>4 number KSH 00070 through 83.</p> <p>5 Do you recognize this document?</p> <p>6 A. Yes.</p> <p>7 Q. What is it?</p> <p>8 A. It is summons before a State Supreme</p> <p>9 Court. It is on an action for the foreclosure.</p> <p>10 Q. Who is the listed plaintiff here?</p> <p>11 A. Alexbay.</p> <p>12 Q. That's your company; right?</p> <p>13 A. Yes.</p> <p>14 Q. Who is the lawsuit against?</p> <p>15 A. Eber Wine and Liquor, Southern Eber</p> <p>16 Wine and Liquor Metro, John Doe et cetera.</p> <p>17 Q. So does this refresh your recollection</p> <p>18 that in February 2012 you did authorize the filing</p> <p>19 of a lawsuit on behalf of Alexbay against Eber</p> <p>20 Brothers Wine and Liquor Corp.?</p> <p>21 A. Yes.</p> <p>22 Q. At the time this lawsuit was filed,</p> <p>23 had you resigned as president of Eber Brothers</p> <p>24 Wine and Liquor Corp.?</p> <p>25 A. I believe so.</p>
<p style="text-align: right;">Page 191</p> <p>1 L. Eber</p> <p>2 Q. There was Harris Beach?</p> <p>3 A. Yes.</p> <p>4 Q. Anyone else?</p> <p>5 A. Benderson.</p> <p>6 Q. What is Benderson?</p> <p>7 A. A real estate company.</p> <p>8 Q. How much was owed to them</p> <p>9 approximately?</p> <p>10 A. It was over two hundred thousand I</p> <p>11 believe at the time.</p> <p>12 Q. Anyone else?</p> <p>13 A. There could have been. I just can't</p> <p>14 remember now.</p> <p>15 Q. At some point in February 2012 you</p> <p>16 through Alexbay filed a lawsuit against Eber</p> <p>17 Brothers Wine and Liquor Corp.; correct?</p> <p>18 A. I don't remember.</p> <p>19 MR. BROOK: Let's go to our next</p> <p>20 exhibit. Up to 44 I think.</p> <p>21 (Plaintiffs' Exhibit 44, a copy of a</p> <p>22 summons and complaint dated February 21,</p> <p>23 2012 bearing Bates number KSH 00070 through</p> <p>24 83, marked for identification, as of this</p> <p>25 date.)</p>	<p style="text-align: right;">Page 193</p> <p>1 L. Eber</p> <p>2 Q. How did you resign? How did you go</p> <p>3 about doing this?</p> <p>4 A. I believe there was a board meeting</p> <p>5 and I submitted my resignation to it. I don't</p> <p>6 actually remember going. You know, how many years</p> <p>7 ago that was. It was when, in 2012 or before</p> <p>8 that.</p> <p>9 Q. It is your recollection that it</p> <p>10 happened at a board meeting; correct?</p> <p>11 A. I believe so, yes. To the best of my</p> <p>12 recollection.</p> <p>13 Q. Do you recall any board meetings of</p> <p>14 Eber Brothers Wine and Liquor Corp. within the two</p> <p>15 or three month period before this document Exhibit</p> <p>16 44 was filed?</p> <p>17 A. I don't remember. You know, it could</p> <p>18 have been at a board meeting. I could have just</p> <p>19 submitted it. Going back I don't remember.</p> <p>20 Q. What do you mean by submitted it, what</p> <p>21 is it?</p> <p>22 A. Submitted a letter of resignation.</p> <p>23 Q. Do you recall ever signing a letter of</p> <p>24 resignation?</p> <p>25 A. I can't remember. I could have, but I</p>

<p style="text-align: right;">Page 194</p> <p>1 L. Eber</p> <p>2 don't remember the whole scenario of what</p> <p>3 happened.</p> <p>4 Q. It had to have been a pretty big deal</p> <p>5 when you resigned as president of your father's</p> <p>6 company; correct?</p> <p>7 MR. CALIHAN: Objection to form.</p> <p>8 MR. RAMSEY: Form.</p> <p>9 Q. Was that an emotional moment for you?</p> <p>10 A. With what we have been through nothing</p> <p>11 is emotional anymore.</p> <p>12 Q. So this was just strictly business; is</p> <p>13 that right?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 Q. You are nodding.</p> <p>16 Is that a yes?</p> <p>17 A. It was part of the nightmare that was</p> <p>18 going on with all these companies and trying to</p> <p>19 keep them from being liquidated to survive.</p> <p>20 Q. What was your understanding as to what</p> <p>21 might cause the business to be liquidated since</p> <p>22 you were afraid of that?</p> <p>23 A. Lack of funds to pay the bills, pay</p> <p>24 the suppliers and you are out.</p> <p>25 Q. So it was your understanding that</p>	<p style="text-align: right;">Page 196</p> <p>1 L. Eber</p> <p>2 National Bank to replace Wells Fargo?</p> <p>3 A. We found them for a small amount. I</p> <p>4 think it was a million five. That wasn't enough.</p> <p>5 We needed more and we needed something that wasn't</p> <p>6 renewed every month or so. We needed somebody to</p> <p>7 give us a commitment and that's why we had to</p> <p>8 clean up the balance sheet to make it look like</p> <p>9 for a bank to want to loan us money.</p> <p>10 Q. Returning to Exhibit 44 in front of</p> <p>11 you.</p> <p>12 Did you review this before it was</p> <p>13 filed?</p> <p>14 A. I don't remember, but I must have.</p> <p>15 You know, I can't remember all these things 2012.</p> <p>16 MR. RAMSEY: Just wait for a question.</p> <p>17 Q. So why did you file this lawsuit?</p> <p>18 A. Why did I file what lawsuit?</p> <p>19 Q. The one that we are looking at here</p> <p>20 Exhibit 44.</p> <p>21 A. Oh, the foreclosure?</p> <p>22 Q. Yes.</p> <p>23 MR. CALIHAN: Objection to form.</p> <p>24 MR. RAMSEY: Form.</p> <p>25 A. I filed it to solidify showing that I</p>
<p style="text-align: right;">Page 195</p> <p>1 L. Eber</p> <p>2 there were certain creditors of the company that</p> <p>3 could have forced a liquidation?</p> <p>4 A. Possibly that or we had to get a bank,</p> <p>5 we had to get bank loans. We had to get a bank</p> <p>6 that would give us money to survive because you</p> <p>7 saw early on Wells Fargo foreclosed on it and that</p> <p>8 put us right out of business in New York.</p> <p>9 Q. When was that?</p> <p>10 A. It was in two thousand and what, five,</p> <p>11 six. I don't have the exact date.</p> <p>12 Q. So you are referring to Wells Fargo</p> <p>13 foreclosing on Eber Metro?</p> <p>14 A. On Eber period. All the Eber</p> <p>15 companies.</p> <p>16 Q. Was there actually like a judicial</p> <p>17 proceeding relating to that?</p> <p>18 A. Not that I know of. They just</p> <p>19 notified us that our loan was in default and we</p> <p>20 were in a workout.</p> <p>21 Q. So it was something short of actually</p> <p>22 initiating foreclosure proceedings in court; is</p> <p>23 that right?</p> <p>24 A. I don't remember being in court on it.</p> <p>25 Q. And then you found Canandaigua</p>	<p style="text-align: right;">Page 197</p> <p>1 L. Eber</p> <p>2 wasn't doing anything underhanded. There would be</p> <p>3 a public record of what I had done on advice of</p> <p>4 counsel.</p> <p>5 Q. Which counsel was that?</p> <p>6 A. Michael Beyma.</p> <p>7 Q. And was it your understanding from the</p> <p>8 outset that Eber Wine and Liquor and Eber Metro</p> <p>9 were going to consent to what you requested?</p> <p>10 A. We filed it and it took its course.</p> <p>11 Q. Had you discussed the lawsuit before</p> <p>12 you filed it with Wendy, your daughter?</p> <p>13 A. I probably had a discussion with her</p> <p>14 of it. I don't remember. I was on advice. My</p> <p>15 discussion was with Michael Beyma.</p> <p>16 Q. Was Michael Beyma also representing</p> <p>17 Eber Brothers Wine and Liquor at the time?</p> <p>18 A. I don't think so. I think he just --</p> <p>19 I don't remember. I don't remember that, but I</p> <p>20 remember that's who I worked with the lawyer on</p> <p>21 this. He had another fellow Brueckner, if you</p> <p>22 look at the bottom, who wasn't with them anymore.</p> <p>23 Q. Who paid the legal fees of Michael</p> <p>24 Beyma and Brueckner?</p> <p>25 A. I did.</p>

<p style="text-align: right;">Page 198</p> <p>1 L. Eber</p> <p>2 Q. You paid them personally?</p> <p>3 A. Yes.</p> <p>4 Q. When did you pay them?</p> <p>5 A. I don't remember.</p> <p>6 Q. Was it at approximately the time when</p> <p>7 the services were being performed?</p> <p>8 A. I believe so.</p> <p>9 Q. Now you were aware that at</p> <p>10 approximately the same time early 2012 or perhaps</p> <p>11 late 2011 Underberg and Kessler was also</p> <p>12 performing legal work for Eber Brothers Wine and</p> <p>13 Liquor Corp.; correct?</p> <p>14 A. Yes.</p> <p>15 Q. What legal work was that?</p> <p>16 A. Just general legal work in operation</p> <p>17 of a business or in legal situations that</p> <p>18 confronted the company, you know, whatever lawyers</p> <p>19 would do. They took over as our general counsel.</p> <p>20 Q. So what kinds of things are you</p> <p>21 talking about they were doing?</p> <p>22 A. I don't have specifics. I don't</p> <p>23 remember specifics.</p> <p>24 Q. Now do you recall how you came up with</p> <p>25 the valuation of Eber Connecticut that you</p>	<p style="text-align: right;">Page 200</p> <p>1 L. Eber</p> <p>2 intangible asset of any significant value and its</p> <p>3 only valuable asset of any kind is Metro's</p> <p>4 ownership of a partial interest in yet another</p> <p>5 company Eber Connecticut LLC."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Was that an accurate statement?</p> <p>9 A. Yes.</p> <p>10 Q. So as of February 2011 or 2012 it was</p> <p>11 consistent with your understanding that Metro's</p> <p>12 interests in subsidiary entities Eber NDC and Eber</p> <p>13 Rhode island had no value?</p> <p>14 A. Eber NDC, Eber Rhode Island, those are</p> <p>15 the two you said, yeah. It had no value.</p> <p>16 Q. When had Eber Rhode Island ceased to</p> <p>17 have any operations?</p> <p>18 A. I don't remember the date. It goes</p> <p>19 back shortly after we bought the company,</p> <p>20 Connecticut was purchased. It came with</p> <p>21 Connecticut.</p> <p>22 Q. And then continuing on page 9 it has</p> <p>23 some paragraphs describing Eber Connecticut and</p> <p>24 one paragraph that says it is a limited liability</p> <p>25 company.</p>
<p style="text-align: right;">Page 199</p> <p>1 L. Eber</p> <p>2 conveyed to the Supreme Court in this lawsuit that</p> <p>3 was filed?</p> <p>4 A. I don't remember.</p> <p>5 Q. Please turn to page 9 of this exhibit.</p> <p>6 It is hard to see page numbers.</p> <p>7 A. Where are you?</p> <p>8 Q. The page beginning at the top numbered</p> <p>9 paragraph is 31. It is on the left side if you</p> <p>10 are opening it wide.</p> <p>11 A. Yes.</p> <p>12 Q. And if you go back one page you can</p> <p>13 see that page 9 is underneath the heading that</p> <p>14 says The Amount of the Indebtedness and the Value</p> <p>15 of the Collateral.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And starting from the bottom of this</p> <p>19 page and going onto the next page, page 9 in</p> <p>20 paragraph 30 it says "Metro does not presently</p> <p>21 operate and it conducts no business activity. It</p> <p>22 has not generated profit of any kind in several</p> <p>23 years. Metro has no cash reserves other than</p> <p>24 those required in the ordinary course of its</p> <p>25 business. Metro has no tangible assets. Its only</p>	<p style="text-align: right;">Page 201</p> <p>1 L. Eber</p> <p>2 A. Where are you?</p> <p>3 Q. Sorry. Paragraph 31.</p> <p>4 A. Yes. I have it.</p> <p>5 Q. Eber Connecticut is a limited</p> <p>6 liability company formed under the laws of The</p> <p>7 State of Delaware.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And then there is a description of who</p> <p>11 the various owners are of Eber Connecticut in</p> <p>12 paragraph 32.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And it states that Polebridge Bowman</p> <p>16 owns six percent of Eber Connecticut; right?</p> <p>17 A. Yes.</p> <p>18 Q. And that Eder-Goodman LLC owns 15</p> <p>19 percent; right?</p> <p>20 A. Yes.</p> <p>21 Q. And in the following paragraph it</p> <p>22 states "Polebridge Bowman is a party unrelated to</p> <p>23 the original secured creditor to Eber Brothers, to</p> <p>24 Metro and/or to Eber Connecticut.</p> <p>25 Do you see that?</p>

<p style="text-align: right;">Page 202</p> <p>1 L. Eber</p> <p>2 A. Yes.</p> <p>3 Q. I will stop for a second.</p> <p>4 Who was the original secured creditor?</p> <p>5 MR. RAMSEY: Form.</p> <p>6 A. I don't -- I would have to go back to</p> <p>7 the lawyers to get that. I don't have an answer</p> <p>8 for you.</p> <p>9 Q. The original secured creditor was you,</p> <p>10 was it not?</p> <p>11 A. It could have been.</p> <p>12 Q. Let's go ahead and answer this. Let's</p> <p>13 go back to paragraph 5 in this document that's on</p> <p>14 the third page.</p> <p>15 A. Five?</p> <p>16 Q. Yes. In the second sentence it says</p> <p>17 "Lester Eber" and then defines that as "the</p> <p>18 original secured creditor."</p> <p>19 Do you see that?</p> <p>20 A. Mm-hmm.</p> <p>21 Q. Is that a yes?</p> <p>22 A. Yes. At the bottom of 5, yes.</p> <p>23 Q. So let's go back now to page 9</p> <p>24 paragraph 33. The second sentence of that</p> <p>25 paragraph says -- let me know when you are there.</p>	<p style="text-align: right;">Page 204</p> <p>1 L. Eber</p> <p>2 transaction?</p> <p>3 MR. RAMSEY: Form.</p> <p>4 A. I was not involved in it. So I was</p> <p>5 aware of it, but I did not -- I was not involved,</p> <p>6 so I can't give you an intelligent answer.</p> <p>7 Q. Nothing in this paragraph 33 on</p> <p>8 Exhibit 44 states that Polebridge Bowman was owned</p> <p>9 by your lawyer, does it?</p> <p>10 A. It mentions Polebridge Bowman. It</p> <p>11 doesn't mention anyone else.</p> <p>12 Q. It doesn't mention Glenn Sturm; right?</p> <p>13 A. No.</p> <p>14 Q. So why wasn't the fact that Polebridge</p> <p>15 Bowman was owned by your lawyer disclosed to the</p> <p>16 court?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A. I do not know.</p> <p>19 Q. You said that you wanted the court to</p> <p>20 make a finding that everything about your</p> <p>21 acceptance of Eber Metro shares was on the up and</p> <p>22 up; right?</p> <p>23 A. Yes.</p> <p>24 Q. So wasn't it important to you that all</p> <p>25 material facts be disclosed to the court?</p>
<p style="text-align: right;">Page 203</p> <p>1 L. Eber</p> <p>2 MR. RAMSEY: Do you have 33?</p> <p>3 Q. Are you there?</p> <p>4 A. Yes, 33.</p> <p>5 Q. Now after stating that Polebridge</p> <p>6 Bowman is unrelated to you or to those companies</p> <p>7 this document continues by saying "Polebridge</p> <p>8 Bowman acquired its ownership interest in Eber</p> <p>9 Conn in May 2010 in an arms length transaction and</p> <p>10 became a new member of Eber Conn by virtue of that</p> <p>11 transaction. The membership units Polebridge</p> <p>12 Bowman acquired were sold to it by Metro."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Was that an accurate statement?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 A. I believe so.</p> <p>18 Q. What is your understanding of what an</p> <p>19 arms length transaction is?</p> <p>20 MR. RAMSEY: Form.</p> <p>21 A. As I told you before, I was aware of</p> <p>22 this. I was -- you are going to have to ask the</p> <p>23 lawyers how this was done.</p> <p>24 Q. So the term arms length transaction a</p> <p>25 way that you would describe the Polebridge Bowman</p>	<p style="text-align: right;">Page 205</p> <p>1 L. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 A. I think that's a legal question or</p> <p>4 something for the court to ask.</p> <p>5 Q. So who made the decision not to</p> <p>6 disclose to the court that Polebridge Bowman was</p> <p>7 owned by your lawyer?</p> <p>8 A. I do not know.</p> <p>9 MR. CALIHAN: Objection to form.</p> <p>10 Q. Going to paragraph 35 the same page.</p> <p>11 I will read that and paragraph 36. This document</p> <p>12 continues by saying "Polebridge Bowman acquired</p> <p>13 its ownership of six percent in Eber Conn in May</p> <p>14 2010 for 350,000 dollars. Eder-Goodman consented</p> <p>15 to the sale of Metro's membership units at that</p> <p>16 price.</p> <p>17 Paragraph 36, "No other sale or</p> <p>18 purchase of any interest in Eber Conn has occurred</p> <p>19 since. Accordingly, Polebridge Bowman's</p> <p>20 acquisition of its ownership interest in Eber Conn</p> <p>21 represents the best evidence of the current value</p> <p>22 of ownership rights in Eber Conn. It is the last</p> <p>23 time the free market has spoken with respect to</p> <p>24 the value of Eber Conn's membership units."</p> <p>25 Do you see that?</p>

52 (Pages 202 - 205)

<p style="text-align: right;">Page 206</p> <p>1 L. Eber</p> <p>2 A. Yes.</p> <p>3 Q. Are those statements accurate?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. If that's what they say I would</p> <p>6 believe so. I can't give you anything to the</p> <p>7 contrary.</p> <p>8 Q. What do you mean by they?</p> <p>9 A. Whoever the lawyers who handled this.</p> <p>10 I suggest you talk to the lawyers.</p> <p>11 Q. So the lawyers you are saying are the</p> <p>12 ones that are responsible for the choice of</p> <p>13 language here?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 A. It wasn't me.</p> <p>16 Q. And so you didn't write it but you did</p> <p>17 review it; right?</p> <p>18 A. I looked at it but I did not write it.</p> <p>19 I needed it to be explained and I should have had</p> <p>20 it, need it to be refreshed since this goes back</p> <p>21 to 2012. So it is a while back for me.</p> <p>22 Q. Was Polebridge Bowman's acquisition of</p> <p>23 six percent of Eber Connecticut a transaction that</p> <p>24 occurred on any kind of market?</p> <p>25 MR. RAMSEY: Form.</p>	<p style="text-align: right;">Page 208</p> <p>1 L. Eber</p> <p>2 to get those membership units and not anyone else;</p> <p>3 correct?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. I was aware of it and you know, I</p> <p>6 thought it was a good idea, but I did not conduct</p> <p>7 the transaction.</p> <p>8 Q. In a free market transaction, does the</p> <p>9 seller pick the specific buyer in advance of the</p> <p>10 transaction?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. I don't -- I think they could. I</p> <p>13 don't know. I can't give you an answer to</p> <p>14 something that I don't know. I have no experience</p> <p>15 with the free market.</p> <p>16 Q. Did you discuss with any other lawyers</p> <p>17 besides Glenn Sturm the possibility of them</p> <p>18 stepping into the role that you anticipated for</p> <p>19 Glenn Sturm?</p> <p>20 A. Glenn Sturm had, although he was a</p> <p>21 lawyer, he had a lot of knowledge as to getting</p> <p>22 bankers, restructuring companies, helping</p> <p>23 companies get back on their feet or getting</p> <p>24 startups going. So he was very, very helpful in</p> <p>25 many of those areas.</p>
<p style="text-align: right;">Page 207</p> <p>1 L. Eber</p> <p>2 A. It says a free market here and</p> <p>3 whatever that is.</p> <p>4 Q. What's is your understanding of what a</p> <p>5 market is?</p> <p>6 A. I think a market is what someone will</p> <p>7 pay for something. A willing buyer. Yeah, a</p> <p>8 willing buyer will pay a willing seller.</p> <p>9 Q. Is a market a place where something</p> <p>10 can be bought behind closed doors?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. I think it could be bought anywhere.</p> <p>13 I don't have a definition of it.</p> <p>14 Q. So in your view the Polebridge Bowman</p> <p>15 acquisition of six percent of Eber Connecticut</p> <p>16 fairly represents a free market transaction; is</p> <p>17 that right?</p> <p>18 A. I believe so. The Glenn Sturm did a</p> <p>19 lot to help us through a very, very difficult</p> <p>20 period and he was entitled to if we couldn't pay</p> <p>21 him to get something for it. That's the way he</p> <p>22 worked. If you look at my affidavit that I</p> <p>23 submitted which I am sure you have, it describes</p> <p>24 it.</p> <p>25 Q. So you specifically wanted Glenn Sturm</p>	<p style="text-align: right;">Page 209</p> <p>1 L. Eber</p> <p>2 Q. Was Glenn Sturm also someone with</p> <p>3 knowledge of trusts?</p> <p>4 A. He could have. He was a very</p> <p>5 knowledgeable person. One of the smartest lawyers</p> <p>6 I had ever met.</p> <p>7 Q. Did you involve Glenn Sturm in matters</p> <p>8 affecting the Allen Eber Trust?</p> <p>9 A. I don't remember that.</p> <p>10 MR. CALIHAN: When you get to a good</p> <p>11 breaking point shortly.</p> <p>12 MR. BROOK: Yes. Let's go ahead and</p> <p>13 take five.</p> <p>14 THE VIDEOGRAPHER: This marks the end</p> <p>15 of media unit number four in the videotaped</p> <p>16 deposition of Lester Eber. We are going off</p> <p>17 the record. The time is 2:55.</p> <p>18 (Recess taken.)</p> <p>19 THE VIDEOGRAPHER: This marks the</p> <p>20 beginning of media unit number five in the</p> <p>21 videotaped deposition of Lester Eber. We</p> <p>22 are going on the record. The time is 3:08.</p> <p>23 MR. BROOK: Let's go for a new Exhibit</p> <p>24 45.</p> <p>25 (Plaintiffs' Exhibit 45, a document</p>

<p style="text-align: right;">Page 210</p> <p>1 L. Eber</p> <p>2 bearing the caption of Alexbay versus Eber</p> <p>3 Brothers and it states it is the affidavit</p> <p>4 of Lester Eber bearing Bates numbers EB</p> <p>5 00001059 through 1063, marked for</p> <p>6 identification, as of this date.)</p> <p>7 Q. Exhibit 45 is a document bearing the</p> <p>8 caption of Alexbay versus Eber Brothers and it</p> <p>9 states it is the affidavit of Lester Eber bearing</p> <p>10 Bates numbers EB 00001059 through 1063.</p> <p>11 Do you recognize this document?</p> <p>12 A. Yes.</p> <p>13 Q. What is it?</p> <p>14 A. It's an affidavit in support of</p> <p>15 judicial determination for commercial</p> <p>16 reasonableness under UCC 9-627.</p> <p>17 Q. And that's your signature on the last</p> <p>18 page of this document; correct?</p> <p>19 A. Yes.</p> <p>20 Q. It states below your signature that it</p> <p>21 was sworn before a notary public on the 14th day</p> <p>22 of March 2012.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. You understood this was a statement</p>	<p style="text-align: right;">Page 212</p> <p>1 L. Eber</p> <p>2 Q. Based upon your knowledge of the Eber</p> <p>3 Metro, Eber Connecticut business, which sales do</p> <p>4 you think you were referring to?</p> <p>5 A. I don't remember.</p> <p>6 Q. And you can't determine what sales you</p> <p>7 were referring to based upon your knowledge of the</p> <p>8 company?</p> <p>9 A. I just don't remember. It is December</p> <p>10 of 2011.</p> <p>11 Q. Why are you reluctant to state that</p> <p>12 the sales you were referring to were the sales of</p> <p>13 six percent to Polebridge Bowman?</p> <p>14 MR. CALIHAN: Objection to form.</p> <p>15 MR. RAMSEY: Form. That's not what he</p> <p>16 said.</p> <p>17 A. I didn't say that.</p> <p>18 Q. Besides Polebridge Bowman, what other</p> <p>19 sales could you have possibly been referring to?</p> <p>20 A. I don't remember.</p> <p>21 Q. I am not asking you what you remember.</p> <p>22 I am asking you as you sit here today.</p> <p>23 A. I don't know.</p> <p>24 Q. So you can't think of anything else</p> <p>25 you might have been referring to?</p>
<p style="text-align: right;">Page 211</p> <p>1 L. Eber</p> <p>2 under oath like today's deposition; correct?</p> <p>3 A. Yes.</p> <p>4 Q. Did you review this document carefully</p> <p>5 before you signed it?</p> <p>6 A. Yes.</p> <p>7 Q. And you knew that this was a document</p> <p>8 that the court might rely upon in deciding whether</p> <p>9 to find the transaction that you had proposed to</p> <p>10 be commercially reasonable or not; correct?</p> <p>11 A. Yes.</p> <p>12 MR. RAMSEY: Form.</p> <p>13 Q. Please turn to the second page</p> <p>14 paragraph 6.</p> <p>15 Are you there?</p> <p>16 A. Yes.</p> <p>17 Q. That states "Based upon very recent</p> <p>18 arms length sales on the open market, Eber Conn's</p> <p>19 value as a going concern is best established at</p> <p>20 4,633,300 dollars as of December 2011."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. What sales were you referring to in</p> <p>24 that sentence?</p> <p>25 A. I don't know. I don't remember.</p>	<p style="text-align: right;">Page 213</p> <p>1 L. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 A. As I told you, going back to 2011 I</p> <p>4 don't remember.</p> <p>5 Q. How many times has Eber Connecticut,</p> <p>6 how many times has Eber Connecticut membership</p> <p>7 units ever been sold?</p> <p>8 A. The only ones I remember are</p> <p>9 Eder-Goodman and Polebridge Bowman.</p> <p>10 Q. And then besides those two</p> <p>11 transactions, there was also a third transaction</p> <p>12 in which the Polebridge Bowman shares were</p> <p>13 transferred to your daughter; correct?</p> <p>14 A. Yes.</p> <p>15 Q. But that was not a sale; correct?</p> <p>16 A. I am not a lawyer. The lawyers</p> <p>17 handled that and I can't give you an answer to it.</p> <p>18 I think you have to ask a lawyer.</p> <p>19 Q. To your knowledge, did Wendy pay</p> <p>20 anything to Polebridge Bowman to acquire its</p> <p>21 shares?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A. I do not know. You know, I know the</p> <p>24 transaction took place, but I do not know the</p> <p>25 details of the transaction.</p>

<p style="text-align: right;">Page 214</p> <p>1 L. Eber</p> <p>2 Q. Do you know why that transaction took</p> <p>3 place?</p> <p>4 A. I believe Wendy had a right of first</p> <p>5 refusal if he wanted to sell it.</p> <p>6 Q. After the Alexbay complaint seeking a</p> <p>7 judicial determination of commercial</p> <p>8 reasonableness was filed, did you discuss that</p> <p>9 lawsuit or any of the related transactions with</p> <p>10 anyone from Southern?</p> <p>11 A. No.</p> <p>12 Q. Did anyone else discuss the Alexbay</p> <p>13 transaction or lawsuit with Southern on your</p> <p>14 behalf?</p> <p>15 A. Not that I know of.</p> <p>16 Q. Please turn to page 3 of Exhibit 45</p> <p>17 paragraph 12 at the bottom that reads "Southern</p> <p>18 has consented to Alexbay's proposal to accept the</p> <p>19 collateral in full satisfaction of Eber Brothers'</p> <p>20 obligation."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. How is Southern's consent obtained?</p> <p>24 A. You know, I don't remember. I imagine</p> <p>25 it was through lawyers. I think it was something</p>	<p style="text-align: right;">Page 216</p> <p>1 L. Eber</p> <p>2 Q. Something --</p> <p>3 A. You know, I got confused. This was</p> <p>4 all handled by lawyers. This is all legalese and</p> <p>5 I was not directly involved in it.</p> <p>6 Q. Other than signing it under penalty of</p> <p>7 perjury; correct?</p> <p>8 A. Yes. On advice of counsel.</p> <p>9 Q. So you signed this document on the</p> <p>10 advice of counsel is what you are saying?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. I didn't do any document, any legal</p> <p>13 document without talking to a lawyer.</p> <p>14 Q. But you were swearing to the</p> <p>15 truthfulness of the facts in this document; right?</p> <p>16 A. That's correct.</p> <p>17 Q. And if a lawyer told you to lie under</p> <p>18 oath, you wouldn't do that would you?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A. No, I wouldn't. I never had a lawyer</p> <p>21 say that to me.</p> <p>22 Q. So you are not suggesting that a</p> <p>23 lawyer advised you to sign something that you</p> <p>24 believe to be untrue in any way; correct?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">Page 215</p> <p>1 L. Eber</p> <p>2 that was handled through lawyers that I was not</p> <p>3 involved. You know, I could have been aware of,</p> <p>4 but I don't remember but it was handled by</p> <p>5 lawyers. It is not something that I would be</p> <p>6 involved in.</p> <p>7 Q. Do you know why Southern wanted</p> <p>8 Spirits of America Inc. was named as a defendant</p> <p>9 in this Alexbay lawsuit?</p> <p>10 A. I believe you should -- I can't</p> <p>11 remember the answer, but I believe in my</p> <p>12 deposition, my affidavit it might have explained</p> <p>13 that.</p> <p>14 Q. So we are looking at your affidavit</p> <p>15 now and that's the first mention of Southern that</p> <p>16 we just covered there and it does not appear to</p> <p>17 state that.</p> <p>18 Is there another affidavit or document</p> <p>19 you are referring to?</p> <p>20 A. No. Uh --</p> <p>21 MR. RAMSEY: Wait for a question.</p> <p>22 Q. Did you want to correct something you</p> <p>23 just said?</p> <p>24 A. No. I vaguely recall something but I</p> <p>25 don't know where it is.</p>	<p style="text-align: right;">Page 217</p> <p>1 L. Eber</p> <p>2 Q. So at the time that you signed this,</p> <p>3 you are reaffirming today you believe that all the</p> <p>4 contents of your affidavit, Exhibit 45, were true</p> <p>5 and correct?</p> <p>6 A. Yes. This is the first time I have</p> <p>7 seen this in a while, but if I signed it it is.</p> <p>8 Q. You are saying you have not seen this</p> <p>9 affidavit in the course of this litigation before?</p> <p>10 A. I have seen this before, but I haven't</p> <p>11 seen it in the course of this litigation.</p> <p>12 Q. Is it correct then that in the course</p> <p>13 of preparing for your testimony today you have not</p> <p>14 reviewed this document?</p> <p>15 A. That's correct.</p> <p>16 Q. Did you review the Alexbay complaint</p> <p>17 that we looked at a few minutes ago?</p> <p>18 A. Yes, I believe so.</p> <p>19 Q. And I should have asked this question</p> <p>20 before, but what did you do to prepare for today's</p> <p>21 deposition?</p> <p>22 A. Today, I have talked to my lawyers.</p> <p>23 Q. Anything else?</p> <p>24 A. That's it.</p> <p>25 Q. And you reviewed documents before</p>

55 (Pages 214 - 217)

<p style="text-align: right;">Page 218</p> <p>1 L. Eber</p> <p>2 today?</p> <p>3 A. Some, yes.</p> <p>4 Q. Which documents do you recall</p> <p>5 reviewing to prepare for today's testimony?</p> <p>6 A. My affidavit and your complaint.</p> <p>7 Q. Which affidavit are you referring to?</p> <p>8 A. I believe it was a Harris Beach</p> <p>9 affidavit.</p> <p>10 MR. BROOK: Let's mark it Exhibit 46.</p> <p>11 (Plaintiffs' Exhibit 46, Affidavit</p> <p>12 of Lester Eber bearing Bates numbers EB</p> <p>13 00017525 through 544, marked for</p> <p>14 identification, as of this date.)</p> <p>15 Q. Exhibit 46 is titled Affidavit of</p> <p>16 Lester Eber bearing Bates numbers EB 00017525</p> <p>17 through 544.</p> <p>18 Is this the affidavit you were just</p> <p>19 referring to a moment ago?</p> <p>20 A. Yes.</p> <p>21 Q. So you reviewed this to prepare for</p> <p>22 today's testimony?</p> <p>23 A. Yes.</p> <p>24 Q. And this was an affidavit that was</p> <p>25 prepared in connection with the Harris Beach</p>	<p style="text-align: right;">Page 220</p> <p>1 L. Eber</p> <p>2 A. Yes.</p> <p>3 Q. Do you remember some testimony about</p> <p>4 an import company that is owned by Eber</p> <p>5 Connecticut?</p> <p>6 A. Yes.</p> <p>7 Q. What is the name of that company?</p> <p>8 A. The import company. There isn't any</p> <p>9 name to it.</p> <p>10 Q. So would it be incorrect to refer to</p> <p>11 it as a separate company owned by Slocum and Sons?</p> <p>12 A. No. It wouldn't be a separate. It's</p> <p>13 just brands that are imported directly by Slocum.</p> <p>14 Q. And do you recall was there a</p> <p>15 particular label or something that was applied to</p> <p>16 that?</p> <p>17 A. No. It is brands, specific brands</p> <p>18 from different countries.</p> <p>19 Q. Please turn to page 5 of this</p> <p>20 affidavit. Paragraph 16 begins "Another</p> <p>21 significant factor in determining the offer to buy</p> <p>22 Slocum was that there were significant tax</p> <p>23 advantages to the Eber entities in making the</p> <p>24 acquisition with the transaction structure that</p> <p>25 was employed."</p>
<p style="text-align: right;">Page 219</p> <p>1 L. Eber</p> <p>2 litigation?</p> <p>3 A. Yes.</p> <p>4 Q. Why did you review this document to</p> <p>5 prepare for today's testimony?</p> <p>6 A. My lawyers thought it was a good idea</p> <p>7 and I thought it was a good idea.</p> <p>8 MR. RAMSEY: Make sure you are not</p> <p>9 disclosing conversations with counsel.</p> <p>10 Q. Please turn to page 4 of this Exhibit</p> <p>11 46. Paragraph 13 states "I have spent my entire</p> <p>12 life running private businesses. Over the course</p> <p>13 of 50 years I have bought and sold many private</p> <p>14 businesses. In my experience privately held</p> <p>15 businesses are difficult to value. A wide variety</p> <p>16 of considerations going to every decision about</p> <p>17 what to pay, what to accept in the purchase or</p> <p>18 sale of a private business."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Is all of that true?</p> <p>22 A. Yes.</p> <p>23 Q. Now you were present for your</p> <p>24 daughter's, most of your daughter's deposition</p> <p>25 yesterday; correct?</p>	<p style="text-align: right;">Page 221</p> <p>1 L. Eber</p> <p>2 What were the tax advantages that you</p> <p>3 were referring to?</p> <p>4 A. I am not a tax lawyer but I believe it</p> <p>5 was a like kind transaction on moneys that we had</p> <p>6 received from, that the company, that Eber Metro</p> <p>7 had received that could be, that would give us a</p> <p>8 tax advantage. This was handled by the lawyers.</p> <p>9 It was totally legalese.</p> <p>10 Q. So Eber Metro had in 2005 sold some</p> <p>11 kind of a business asset?</p> <p>12 A. Well, Eber Metro had sold 50 percent</p> <p>13 of their business to NDC as you remember from</p> <p>14 before.</p> <p>15 Q. And what did NDC pay for that?</p> <p>16 A. What did they pay? I don't remember</p> <p>17 the exact amount.</p> <p>18 Q. But it was a significant cash</p> <p>19 infusion?</p> <p>20 A. Yes.</p> <p>21 Q. In paragraph 17 you begin by saying</p> <p>22 "In retrospect, I believe Eber Metro significantly</p> <p>23 overpaid to acquire Slocum."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 222</p> <p>1 L. Eber</p> <p>2 Q. Do you still believe that?</p> <p>3 A. Yes.</p> <p>4 Q. So if someone offered 21 million</p> <p>5 dollars to buy Slocum today, you would jump on</p> <p>6 that offer?</p> <p>7 MR. RAMSEY: Form.</p> <p>8 Q. Correct?</p> <p>9 A. I haven't seen that kind of an offer.</p> <p>10 We haven't had any offers. I don't have an answer</p> <p>11 for you.</p> <p>12 Q. Have you thought about in recent years</p> <p>13 how much you would expect to receive or want to</p> <p>14 receive in the event of a sale of Eber Metro's</p> <p>15 interest in Eber Connecticut?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 A. No, I haven't.</p> <p>18 Q. What do you think the current value of</p> <p>19 Eber Connecticut is as a whole?</p> <p>20 A. I don't know.</p> <p>21 Q. In connection with attempts to resolve</p> <p>22 this case, you offered to sell a little over 50</p> <p>23 percent of the equity interest value in Eber</p> <p>24 Connecticut to plaintiffs for over ten million</p> <p>25 dollars; correct?</p>	<p style="text-align: right;">Page 224</p> <p>1 L. Eber</p> <p>2 million dollars to purchase all of Eber Metro's</p> <p>3 interests in Eber Connecticut, would you accept</p> <p>4 that?</p> <p>5 MR. RAMSEY: Form.</p> <p>6 A. I am not here to buy or sell or</p> <p>7 anything. I have no answer for you. I just am</p> <p>8 not here for that.</p> <p>9 Q. So you are refusing to answer the</p> <p>10 question?</p> <p>11 MR. RAMSEY: No. That's not what he</p> <p>12 said.</p> <p>13 A. That's not what I said. I said I am</p> <p>14 not here to buy or sell the company. This is not</p> <p>15 an auction here. I am here to answer your</p> <p>16 questions to the best of my ability.</p> <p>17 Q. So if Andy Eder offered five million</p> <p>18 dollars to buy all of Eber Metro's interests in</p> <p>19 Eber Connecticut, would you accept that?</p> <p>20 MR. RAMSEY: Form.</p> <p>21 Q. Would you sell the company?</p> <p>22 A. No.</p> <p>23 Q. Why not?</p> <p>24 A. Would I not sell it because I have put</p> <p>25 a lot more into that company to keep it alive.</p>
<p style="text-align: right;">Page 223</p> <p>1 L. Eber</p> <p>2 A. I offered that? I don't remember</p> <p>3 that.</p> <p>4 Q. You don't remember offering phantom</p> <p>5 stock interests to plaintiffs?</p> <p>6 A. Oh, the phantom, phantom stock. We</p> <p>7 offered phantom stock. You gave me -- you didn't</p> <p>8 say phantom stock. Yes.</p> <p>9 Q. And the phantom stock was not actual</p> <p>10 equity. It was instead a derivative that was</p> <p>11 based on the value of the equity; correct?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. I am not a lawyer and I do not</p> <p>14 particularly understand the legalese. So that you</p> <p>15 would have to talk to a lawyer on that.</p> <p>16 Q. Is it fair to say that you believed</p> <p>17 that if plaintiffs wanted to get approximately 51</p> <p>18 percent of Eber Connecticut that they had to pay</p> <p>19 approximately ten million dollars for that?</p> <p>20 A. I don't believe anything. I cannot</p> <p>21 intelligently discuss that with you. I was not --</p> <p>22 I think that's a legalese. It is legal terms and</p> <p>23 that's who you have to talk to not me. You are</p> <p>24 talking to the wrong person on that.</p> <p>25 Q. So if plaintiffs offered you five</p>	<p style="text-align: right;">Page 225</p> <p>1 L. Eber</p> <p>2 Q. What does that have to do with what</p> <p>3 its worth to a third-party?</p> <p>4 A. Listen, I am not here to buy or sell a</p> <p>5 company. You are giving me hypothetical questions</p> <p>6 which I don't have answers for that I would have</p> <p>7 to consult my lawyer or financial people to talk</p> <p>8 to and I am not capable of giving you an answer</p> <p>9 here today on this.</p> <p>10 Q. You understand that the value of Eber</p> <p>11 Connecticut is an issue in this case; correct?</p> <p>12 A. Yes.</p> <p>13 MR. RAMSEY: Form.</p> <p>14 Q. So we are talking about the value of a</p> <p>15 privately held business.</p> <p>16 Isn't ultimately the most important</p> <p>17 thing for someone who wants to buy a privately</p> <p>18 held business the amount that the seller would</p> <p>19 accept for it?</p> <p>20 MR. RAMSEY: Form.</p> <p>21 Q. Is that a yes?</p> <p>22 A. No, it is not. I don't have an answer</p> <p>23 for you. I am not -- I do not -- I have a whole</p> <p>24 -- I don't have an answer for you.</p> <p>25 Q. Let's look at your affidavit paragraph</p>

<p style="text-align: right;">Page 226</p> <p>1 L. Eber</p> <p>2 15. It states "Eber Brothers analysis of the</p> <p>3 appropriate purchase price for Slocum was also</p> <p>4 significantly affected by the belief that there</p> <p>5 were other strong competitors who were interested</p> <p>6 in buying Slocum at the same time. They saw the</p> <p>7 strategic value of Slocum's business as well. It</p> <p>8 wasn't a matter of seeing how little it would cost</p> <p>9 to buy Slocum, rather it was a matter of</p> <p>10 anticipating how high the purchase price would</p> <p>11 have to be to purchase the business and prevent</p> <p>12 key competitors from seizing this opportunity."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. So weren't you saying that at least</p> <p>16 two components to determining the purchase price</p> <p>17 for a private business like Slocum were both what</p> <p>18 the seller is willing to sell it for and also what</p> <p>19 other third parties are willing to pay for it?</p> <p>20 MR. RAMSEY: Form.</p> <p>21 A. Yes.</p> <p>22 Q. So if the price that the seller or the</p> <p>23 current owner is willing to pay is relevant, then</p> <p>24 I am going to return to -- then wouldn't you agree</p> <p>25 that your opinion as the person who controls Eber</p>	<p style="text-align: right;">Page 228</p> <p>1 L. Eber</p> <p>2 there was the great recession or whatever business</p> <p>3 was way off. Financial companies were going out</p> <p>4 of business and everything. So the environment</p> <p>5 changed dramatically in a very short period of</p> <p>6 time.</p> <p>7 Q. So the first full calendar year when</p> <p>8 Eber controlled Slocum was 2006; correct?</p> <p>9 A. If you say so. I don't remember the</p> <p>10 date.</p> <p>11 Q. It was a few years. There were a few</p> <p>12 years of time when Eber controlled Slocum before</p> <p>13 the recession occurred; correct?</p> <p>14 A. Well, we got into it pretty fast after</p> <p>15 we bought it. I think 2007, 2008 and '9 were</p> <p>16 tough years for us.</p> <p>17 Q. 2006 you are saying that was also not</p> <p>18 a profitable year?</p> <p>19 A. I don't remember.</p> <p>20 Q. Please let's look at paragraph 17</p> <p>21 which goes from pages 5 to 6 on Exhibit 46. After</p> <p>22 the sentence we read before about overpaying it</p> <p>23 states "Although prior to Eber Metro's acquisition</p> <p>24 Slocum was profitable. During each fiscal year</p> <p>25 from 2005 through 2012 Slocum experienced</p>
<p style="text-align: right;">Page 227</p> <p>1 L. Eber</p> <p>2 Connecticut of what the value of that company is</p> <p>3 and what you would accept for it is relevant in</p> <p>4 determining the value of the company?</p> <p>5 MR. RAMSEY: Form.</p> <p>6 A. I think the environment, the date, the</p> <p>7 time, the whole business. There is so many</p> <p>8 variables there is no direct answer that I could</p> <p>9 give you.</p> <p>10 Q. Was Slocum and Sons profitable before</p> <p>11 it was acquired by Eber Brothers?</p> <p>12 A. I believe they had -- they were making</p> <p>13 money. I don't remember that well, but I believe</p> <p>14 they were making some money.</p> <p>15 Q. And what was the basis for that</p> <p>16 belief?</p> <p>17 A. What my financial people had told me.</p> <p>18 Q. So they conducted some due diligence</p> <p>19 on Slocum?</p> <p>20 A. Yes.</p> <p>21 Q. And after Eber Brothers or Eber Metro</p> <p>22 acquired Slocum, it ceased to be profitable; is</p> <p>23 that right?</p> <p>24 A. I think there were a lot of</p> <p>25 situations. There were suppliers that left. That</p>	<p style="text-align: right;">Page 229</p> <p>1 L. Eber</p> <p>2 significant losses with aggregate net losses of</p> <p>3 7,275,269 dollars during that same period."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. So even in the years before the</p> <p>7 recession occurred Slocum under your control was</p> <p>8 experiencing significant losses; is that right?</p> <p>9 A. That's correct.</p> <p>10 Q. And what were the reasons for those</p> <p>11 losses?</p> <p>12 A. Part of it was the economy. Losses of</p> <p>13 major suppliers. A change in the market. All</p> <p>14 kinds of -- you know, the economy was terrible and</p> <p>15 we had lost the major suppliers.</p> <p>16 Q. So it is your testimony the economy</p> <p>17 was terrible in the years 2005, 2006?</p> <p>18 A. No. It was going into that. 2007,</p> <p>19 '8, '9 is when they went into the difficult</p> <p>20 economy but major suppliers left. Had to change</p> <p>21 things overnight.</p> <p>22 Q. Which suppliers left?</p> <p>23 A. Deutsche. They went dual. That's</p> <p>24 Yellow Tail. Duck Horn is another winery.</p> <p>25 Q. Did any suppliers go dual with Slocum</p>

<p style="text-align: right;">Page 230</p> <p>1 L. Eber</p> <p>2 and Sons in the first year or two after Eber</p> <p>3 Brothers acquired it?</p> <p>4 A. Not -- I think it happened shortly you</p> <p>5 know within two years. I can't remember. I don't</p> <p>6 remember the dates of the duals.</p> <p>7 Q. So can you offer any explanation for</p> <p>8 why the company Eber Connecticut was experiencing</p> <p>9 significant losses in the years 2005, 2006 before</p> <p>10 any recession and before any major suppliers went</p> <p>11 dual?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. I think the -- there were suppliers</p> <p>14 that went dual during that period and it didn't</p> <p>15 take much when you are selling two hundred</p> <p>16 thousand cases of Yellow Tail to, we are down to</p> <p>17 twenty thousand today. That would have been</p> <p>18 enough to do it. Your major supplier and then</p> <p>19 there were some other ones. I can't remember but</p> <p>20 it was -- that was, it was a problem for the</p> <p>21 company.</p> <p>22 Q. After Eber Brothers acquired Eber</p> <p>23 Connecticut or acquired Slocum through Eber</p> <p>24 Connecticut, did it appoint someone to be the</p> <p>25 day-to-day operations manager for Eber</p>	<p style="text-align: right;">Page 232</p> <p>1 L. Eber</p> <p>2 management. I wouldn't necessarily blame</p> <p>3 everything. There were a series of events that</p> <p>4 happened to the company. I wouldn't blame anyone</p> <p>5 in particular.</p> <p>6 Q. Please turn to page 12 of this</p> <p>7 affidavit. In paragraph 30 you wrote "Between</p> <p>8 2008 and 2012 Eber Connecticut also contacted at</p> <p>9 least four different strategic wine and liquor</p> <p>10 distributors in the northeast to see if there was</p> <p>11 any interest in acquiring Eber Connecticut."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Which distributors were you referring</p> <p>15 to?</p> <p>16 A. Different wine and liquor wholesalers</p> <p>17 in the northeast. Principally Connecticut, New</p> <p>18 York and New Jersey.</p> <p>19 Q. What were the names of the</p> <p>20 distributors?</p> <p>21 A. Well, one was Peerless. They are in</p> <p>22 New York and they own a company in Connecticut.</p> <p>23 Then we talked to a couple in New</p> <p>24 Jersey, Allied and Fedway.</p> <p>25 I forgot who the forth one was.</p>
<p style="text-align: right;">Page 231</p> <p>1 L. Eber</p> <p>2 Connecticut?</p> <p>3 A. By operations you mean sales or</p> <p>4 overall management or --</p> <p>5 Q. Sales and overall management.</p> <p>6 A. And the question was when?</p> <p>7 Q. Let's step back.</p> <p>8 So you were at the time of the</p> <p>9 acquisition of Slocum and Sons the president of</p> <p>10 all of the Eber Brothers operations; correct?</p> <p>11 A. Yes.</p> <p>12 Q. So you oversaw New York, Ohio,</p> <p>13 Delaware and Connecticut; correct?</p> <p>14 A. Yes.</p> <p>15 Q. So who was the point person for</p> <p>16 Connecticut?</p> <p>17 A. I had hired a fellow who had been with</p> <p>18 Deutsche and he didn't work out. So we -- he was</p> <p>19 there.</p> <p>20 Q. Was he a contributing factor to the</p> <p>21 losses that Slocum and Sons experienced?</p> <p>22 A. You know, I am not blaming at all. It</p> <p>23 was a change in management from to owner operators</p> <p>24 there who, you know, did things directly</p> <p>25 themselves as opposed to he was the new</p>	<p style="text-align: right;">Page 233</p> <p>1 L. Eber</p> <p>2 Q. Was it Magliocco?</p> <p>3 A. Magliocco was Peerless.</p> <p>4 MR. CALIHAN: My guy. What a</p> <p>5 character.</p> <p>6 Q. When were the discussions with</p> <p>7 Peerless?</p> <p>8 A. I don't remember the dates.</p> <p>9 Q. When were the discussions with Allied?</p> <p>10 A. There weren't any discussions. Just a</p> <p>11 phone conversation with them and they weren't</p> <p>12 interested.</p> <p>13 Q. When were the discussions with Fedway?</p> <p>14 A. Same thing.</p> <p>15 Q. Same thing as Allied?</p> <p>16 A. Yes. They were both in New Jersey.</p> <p>17 Q. And the fourth company, although you</p> <p>18 can't recall its name, how far did those</p> <p>19 discussions go?</p> <p>20 A. They never went anywheres. The only</p> <p>21 one we had a meeting with was Peerless.</p> <p>22 Q. So the fourth one was also just a</p> <p>23 phone call and nothing happened?</p> <p>24 A. I don't remember.</p> <p>25 Q. And so with Peerless, how many</p>

<p style="text-align: right;">Page 234</p> <p>1 L. Eber</p> <p>2 meetings was it?</p> <p>3 A. I would say maybe two.</p> <p>4 Q. And did you get to the point of</p> <p>5 exchanging financial information?</p> <p>6 A. Yes.</p> <p>7 Q. And did you involve lawyers?</p> <p>8 A. I must have, but I don't remember who.</p> <p>9 It had to be Harris Beach.</p> <p>10 Q. So you believe it was Harris Beach</p> <p>11 that was involved?</p> <p>12 A. If there was a lawyer in it. I just</p> <p>13 don't remember.</p> <p>14 Q. Did you get to the point of discussing</p> <p>15 sales prices with Peerless?</p> <p>16 A. No.</p> <p>17 Q. Were any financial terms discussed</p> <p>18 with them?</p> <p>19 A. We exchanged -- they got our financial</p> <p>20 statements.</p> <p>21 Q. How did they respond to that?</p> <p>22 A. By taking our largest supplier away</p> <p>23 from us after it.</p> <p>24 Q. Which one was that?</p> <p>25 A. Yellow Tail.</p>	<p style="text-align: right;">Page 236</p> <p>1 L. Eber</p> <p>2 Q. Anyone else?</p> <p>3 A. Toby Slocum.</p> <p>4 Q. Anyone else?</p> <p>5 A. And possibly Drew Barter. He is part</p> <p>6 of the family. To the best of my knowledge, I can</p> <p>7 remember was John Slocum and Toby Slocum.</p> <p>8 Q. Who was the head of that family at the</p> <p>9 time?</p> <p>10 A. Tom Slocum.</p> <p>11 Q. So you did not agree to employ Tom; is</p> <p>12 that right?</p> <p>13 A. No.</p> <p>14 Q. Was he retired at that point?</p> <p>15 A. No. He was there for a while.</p> <p>16 Q. And so did he continue to work once</p> <p>17 Eber Connecticut took over?</p> <p>18 A. For a while.</p> <p>19 Q. About how long?</p> <p>20 A. I don't remember.</p> <p>21 Q. What was his position?</p> <p>22 A. He ran it when he was there.</p> <p>23 Q. What was John Slocum's position?</p> <p>24 A. He wasn't there. He was in Rhode</p> <p>25 Island at the time. So he was working in the</p>
<p style="text-align: right;">Page 235</p> <p>1 L. Eber</p> <p>2 Q. Had you had a non-disclosure agreement</p> <p>3 in place before those discussions?</p> <p>4 A. I don't know. We could have.</p> <p>5 Q. Did you end up suing Peerless?</p> <p>6 A. No.</p> <p>7 Q. Is Peerless still a preferred</p> <p>8 distributor for Yellow Tail today?</p> <p>9 A. In Connecticut, yes.</p> <p>10 Q. When you were meeting with Peerless,</p> <p>11 how much money were you looking to get them to</p> <p>12 offer?</p> <p>13 A. Never any -- there were never any</p> <p>14 figures that I remember. It was quite a while ago</p> <p>15 and I don't remember any figures.</p> <p>16 Q. Did you have a sense in your mind as</p> <p>17 to what you thought the company should fetch?</p> <p>18 A. No.</p> <p>19 Q. As part of the acquisition of Slocum</p> <p>20 and Sons, you agreed to retain one or more of the</p> <p>21 Slocums as employees; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. And which individuals specifically did</p> <p>24 you agree to retain?</p> <p>25 A. John Slocum.</p>	<p style="text-align: right;">Page 237</p> <p>1 L. Eber</p> <p>2 company in Rhode Island.</p> <p>3 Q. Was he running the Rhode Island part?</p> <p>4 A. Yes.</p> <p>5 Q. At some point did he come back to</p> <p>6 Connecticut?</p> <p>7 A. Yes.</p> <p>8 Q. When was that?</p> <p>9 A. It wasn't that long. We closed Rhode</p> <p>10 Island down.</p> <p>11 Q. What was Toby Slocum's position?</p> <p>12 A. He is a cripple and it is very hard</p> <p>13 for him every day. It was a challenge and he had</p> <p>14 some accounts to call on.</p> <p>15 Q. I am sorry.</p> <p>16 What was his position? I didn't</p> <p>17 understand that.</p> <p>18 A. He was a salesman.</p> <p>19 Q. And is it Drew Barter?</p> <p>20 A. Yes.</p> <p>21 Q. What was his position?</p> <p>22 A. He was a salesman.</p> <p>23 Q. Are John, Toby and Drew still employed</p> <p>24 by Eber Connecticut?</p> <p>25 A. John and Drew are. Toby has been very</p>

<p style="text-align: right;">Page 238</p> <p>1 L. Eber</p> <p>2 sick. He was in a bad accident. He is retired.</p> <p>3 Q. As part of the deal with to purchase</p> <p>4 Slocum and Sons, did you agree to have ability for</p> <p>5 certain of the Slocum individuals to get bonuses</p> <p>6 after a five-year period?</p> <p>7 A. You know, I don't remember that. It</p> <p>8 is something that could have been in there, but I</p> <p>9 don't remember it. I just don't remember.</p> <p>10 Q. Do you remember in the calendar year</p> <p>11 2010 that there were a number of larger than</p> <p>12 average bonuses paid to the Slocums?</p> <p>13 A. They could have been part of -- it</p> <p>14 could have happened. I don't remember that. I</p> <p>15 don't remember what was the cause of it or why.</p> <p>16 If it was in the agreement or what. I just don't</p> <p>17 remember.</p> <p>18 Q. Please turn to page 13 of Exhibit 46.</p> <p>19 Paragraph 33 apparently summarizing what is</p> <p>20 written here before states "In light of these</p> <p>21 unfortunate circumstances the value of Eber</p> <p>22 Connecticut in 2010 was extremely uncertain. It</p> <p>23 could not be derived with any precision at all."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 240</p> <p>1 L. Eber</p> <p>2 pursuant to a settlement agreement reached; is</p> <p>3 that correct?</p> <p>4 A. That's correct, yes. He was never</p> <p>5 hired as a valuation person. He was hired as a</p> <p>6 lawyer.</p> <p>7 Q. And what do you refer to when you talk</p> <p>8 about something he may think he overheard me say?</p> <p>9 A. I don't know where he came up with</p> <p>10 that from. I don't know.</p> <p>11 Q. Do you recall believing that Eber</p> <p>12 Connecticut should be worth twenty million</p> <p>13 dollars?</p> <p>14 A. No.</p> <p>15 Q. In 2010 did you believe that Eber</p> <p>16 Connecticut was worth twenty million dollars?</p> <p>17 A. No.</p> <p>18 Q. How much did you think it was worth?</p> <p>19 A. I don't know. What I say here before</p> <p>20 it was extremely uncertain. I don't think there</p> <p>21 was any value. It could have been worthless.</p> <p>22 With debts we had and the lawsuits and everything</p> <p>23 else being thrown at us I don't know how it</p> <p>24 survived. If it hadn't we wouldn't be here today.</p> <p>25 If survived because of the money I personally put</p>
<p style="text-align: right;">Page 239</p> <p>1 L. Eber</p> <p>2 Q. Was that accurate?</p> <p>3 A. Yes.</p> <p>4 Q. In paragraph 34 you make reference to</p> <p>5 a statement by Pat Dalton stating "Mr. Dalton's</p> <p>6 statement in paragraph 18 of the first Dalton</p> <p>7 affidavit that he believed Eber Connecticut quote,</p> <p>8 was worth it in the vicinity of twenty million</p> <p>9 dollars, end quote is uninformed and just flatly</p> <p>10 wrong. Mr. Dalton was retained as a lawyer not a</p> <p>11 financial advisor or valuation expert. Whatever</p> <p>12 he may think he overheard me say in 2010 he</p> <p>13 clearly misunderstood."</p> <p>14 What were you referring to there?</p> <p>15 A. That Dalton if you take this -- that</p> <p>16 was a statement he made in the lawsuit with Harris</p> <p>17 Beach which in a further affidavit he recanted and</p> <p>18 admitted that he was not a financial person and</p> <p>19 did not -- was a lawyer and did not specialize in</p> <p>20 valuing companies and did not -- that was not his</p> <p>21 job.</p> <p>22 Q. You are talking about the subsequent</p> <p>23 affidavit in which he recanted?</p> <p>24 A. Yes.</p> <p>25 Q. And he executed that affidavit</p>	<p style="text-align: right;">Page 241</p> <p>1 L. Eber</p> <p>2 in.</p> <p>3 Q. Why did you not extent the maturity</p> <p>4 date on your line of credit note rather than begin</p> <p>5 foreclosure proceedings?</p> <p>6 A. I am not a lawyer. I didn't write it.</p> <p>7 I followed the advice of lawyers.</p> <p>8 Q. Which lawyers?</p> <p>9 A. I had so many lawyers I don't want to</p> <p>10 give you the wrong name. Whoever -- what document</p> <p>11 is it?</p> <p>12 Q. Your line of credit note Eber Metro</p> <p>13 the one with the maturity date of December 31,</p> <p>14 2011.</p> <p>15 A. Yeah.</p> <p>16 Q. So which lawyers were involved in</p> <p>17 advising you to allow that default to occur rather</p> <p>18 than extending the terms of the note?</p> <p>19 MR. CALIHAN: Objection to form.</p> <p>20 A. I would have to go back. I don't</p> <p>21 remember which lawyer did it. There were</p> <p>22 different lawyers doing different documents. So I</p> <p>23 can't give you the name of the specific one that</p> <p>24 wrote that. But it was written by my lawyer.</p> <p>25 That's not terminology or things that I would</p>

<p style="text-align: right;">Page 242</p> <p>1 L. Eber</p> <p>2 know.</p> <p>3 Q. Let's look at pages 17 to 18 paragraph</p> <p>4 45 of this Exhibit 46. In that you are discussing</p> <p>5 the Alexbay foreclosure action. You say "A</p> <p>6 judicial action is not required under New York</p> <p>7 law, --</p> <p>8 A. 45 you are on?</p> <p>9 Q. Yes, 45.</p> <p>10 -- but was commenced out of an</p> <p>11 abundance of caution to alert any potential</p> <p>12 creditors of the foreclosure. Alexbay named</p> <p>13 Southern as a party to the action because it had a</p> <p>14 UCC on file asserting it was a secured creditor of</p> <p>15 Eber Brothers and Eber Metro. While Southern</p> <p>16 originally opposed the action it ultimately did</p> <p>17 not take any action to frustrate it."</p> <p>18 In what way did Southern originally</p> <p>19 oppose the action?</p> <p>20 A. I think it is something that was left</p> <p>21 over that they hadn't done anything with from the</p> <p>22 loan that they had given us to keep us out of</p> <p>23 bankruptcy. It was still there, so.</p> <p>24 Q. So had the loan already been repaid by</p> <p>25 that point?</p>	<p style="text-align: right;">Page 244</p> <p>1 L. Eber</p> <p>2 A. Yes.</p> <p>3 Q. What were you referring to there?</p> <p>4 A. Limiting the amount of money we could</p> <p>5 borrow from a bank.</p> <p>6 Q. How did Eder-Goodman's investment</p> <p>7 limit that?</p> <p>8 A. It was the agreement that was signed</p> <p>9 when they bought the 15 percent that we could not</p> <p>10 borrow more than five million from a bank.</p> <p>11 Q. Why did you agree to that?</p> <p>12 A. I didn't. It was written by Mr.</p> <p>13 Dalton.</p> <p>14 Q. And your understanding is that Mr.</p> <p>15 Dalton agreed to that even though you did not?</p> <p>16 A. I signed it. It was done and it was</p> <p>17 the lawyers worked it out. They worked out a very</p> <p>18 good deal for themselves. They have a lot of</p> <p>19 security on top of that in their agreement.</p> <p>20 Q. Did you ever ask Eder-Goodman to amend</p> <p>21 that term of the agreement?</p> <p>22 A. We would like them to yeah. They</p> <p>23 didn't want to do it.</p> <p>24 Q. When did you ask them that?</p> <p>25 A. I think it goes back a few years I</p>
<p style="text-align: right;">Page 243</p> <p>1 L. Eber</p> <p>2 A. The loan to Southern, yes.</p> <p>3 Q. So what did you mean by saying while</p> <p>4 Southern originally opposed the action?</p> <p>5 A. You know, they wanted the UCC's there</p> <p>6 and then they did not do anything to fight this</p> <p>7 but the UCC's were still there as I believe a</p> <p>8 carryover from the original loan.</p> <p>9 Q. So you didn't mean that Southern</p> <p>10 originally opposed you taking Eber Metro from Eber</p> <p>11 Brothers Wine and Liquor and putting it in</p> <p>12 Alexbay?</p> <p>13 A. I don't remember what they did or</p> <p>14 would not do. That was lawyers. It was all done</p> <p>15 with lawyers. It wasn't me. I was not a party to</p> <p>16 it. You'd have to talk to the lawyers.</p> <p>17 Q. I want to ask you about a sentence</p> <p>18 that's in paragraph 46. You are referring to the</p> <p>19 time period of winter 2012 and the second to last</p> <p>20 sentence states "Eder-Goodman's investment in Eber</p> <p>21 Connecticut had brought with it a number of</p> <p>22 negative covenant constraints on our flexibility</p> <p>23 in raising debt capital and in selling Eber</p> <p>24 Connecticut."</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 245</p> <p>1 L. Eber</p> <p>2 believe.</p> <p>3 Q. And who had that conversation with</p> <p>4 Eder-Goodman?</p> <p>5 A. I don't remember.</p> <p>6 Q. Did it, did the conversation get far</p> <p>7 enough to where you actually showed them in</p> <p>8 writing what amendment you wanted to make?</p> <p>9 A. I think it was -- I was not involved</p> <p>10 in the conversation. So it -- I would have to go</p> <p>11 back and find out who did.</p> <p>12 Q. In what way did Eder-Goodman's</p> <p>13 investment constrain your ability to sell Eber</p> <p>14 Connecticut?</p> <p>15 A. They have right of first refusal.</p> <p>16 Q. So how does that affect the ability to</p> <p>17 sell the company?</p> <p>18 A. They would have the right to buy it</p> <p>19 before anyone else.</p> <p>20 Q. But only if they paid the same price;</p> <p>21 right?</p> <p>22 A. Right of first refusal would inhibit</p> <p>23 the ability to be flexible to sell it to who you</p> <p>24 want to.</p> <p>25 Q. And did they still have a right of</p>

<p style="text-align: right;">Page 246</p> <p>1 L. Eber</p> <p>2 first refusal?</p> <p>3 A. Yes.</p> <p>4 Q. Have you ever discussed selling the</p> <p>5 remainder of Eber Metro's interest in Eber</p> <p>6 Connecticut to Eder-Goodman?</p> <p>7 A. No.</p> <p>8 Q. Why not?</p> <p>9 A. They are not interested.</p> <p>10 Q. How do you know that?</p> <p>11 A. They bought this to keep Southern out</p> <p>12 of the state. That's the only reason they bought</p> <p>13 it.</p> <p>14 Q. But you never had a conversation with</p> <p>15 anyone from Eder-Goodman about whether they are</p> <p>16 interested in buying the rest of it?</p> <p>17 A. I haven't had it and they haven't</p> <p>18 proposed it either. I think they bought it just</p> <p>19 to keep Eder-Goodman out of the state. It was</p> <p>20 worth it to them.</p> <p>21 Q. Well, have you ever done anything to</p> <p>22 indicate to anyone from Eder-Goodman that you</p> <p>23 might be open to selling Eber Connecticut and</p> <p>24 walking away from the business?</p> <p>25 MR. RAMSEY: Form.</p>	<p style="text-align: right;">Page 248</p> <p>1 L. Eber</p> <p>2 Q. Bottom of page 18 is paragraph 47.</p> <p>3 This reads "In light of these continuing</p> <p>4 unfortunate circumstances the value of equity in</p> <p>5 Eber Connecticut in 2012 continued to be quite</p> <p>6 uncertain. It couldn't be derived at that time</p> <p>7 with any precision at all."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And was that accurate?</p> <p>11 A. Yeah.</p> <p>12 Q. What attempts, if any, did you make to</p> <p>13 try to value Eber Connecticut in 2012?</p> <p>14 A. I didn't do anything. I was fighting</p> <p>15 for survival. I kept paying bills personally and</p> <p>16 putting out fires and keeping the company alive to</p> <p>17 keep it out of bankruptcy or keep it liquid.</p> <p>18 Q. So dealing with the bankers you had to</p> <p>19 provide them with some estimate of what the</p> <p>20 company's equity value was; correct?</p> <p>21 A. Canandaigua was overcollateralized</p> <p>22 because I left. I had five hundred thousand with</p> <p>23 them personally. 120 thousand in stock personally</p> <p>24 and I personally guaranteed their loan. So they</p> <p>25 were over collateralized.</p>
<p style="text-align: right;">Page 247</p> <p>1 L. Eber</p> <p>2 A. No. We haven't. We have not had a</p> <p>3 close working relationship with them. It's been</p> <p>4 very competitive.</p> <p>5 MR. CALIHAN: Brian, I think he</p> <p>6 misspoke two answers ago. I think he said</p> <p>7 Eber-Goodman and I think he meant to say</p> <p>8 Southern. I don't know if you want to</p> <p>9 correct it.</p> <p>10 MR. RAMSEY: I think it is pretty</p> <p>11 clear what he meant but.</p> <p>12 MR. BROOK: So he said Eder-Goodman</p> <p>13 twice?</p> <p>14 MR. CALIHAN: Yes. I think he meant</p> <p>15 Southern the first time.</p> <p>16 MR. BROOK: Talking about keeping</p> <p>17 Southern out of --</p> <p>18 MR. CALIHAN: Yes.</p> <p>19 MR. BROOK: It is understood that</p> <p>20 Eder-Goodman is not trying to keep itself</p> <p>21 out of Connecticut.</p> <p>22 MR. CALIHAN: Maybe it is late in the</p> <p>23 day.</p> <p>24 THE WITNESS: Oh, yes.</p> <p>25 BY MR. BROOK:</p>	<p style="text-align: right;">Page 249</p> <p>1 L. Eber</p> <p>2 Q. Well, the banks when making these</p> <p>3 loans they want to have an understanding of what</p> <p>4 the debt to asset ratio to the company; right?</p> <p>5 A. They just looked at what they had.</p> <p>6 They were overcollateralized and they had the</p> <p>7 inventory and the receivables.</p> <p>8 Q. So were they basing the value of the</p> <p>9 assets on Generally Accepted Accounting</p> <p>10 Principles?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. I am not an accountant. You would</p> <p>13 have to ask our accountant.</p> <p>14 Q. The company had annual financial</p> <p>15 statements prepared and audited; right?</p> <p>16 A. Yes.</p> <p>17 Q. And those were based upon Generally</p> <p>18 Accepted Accounting Principles?</p> <p>19 A. Yes.</p> <p>20 Q. And those statements included</p> <p>21 estimates of the value of the equity of the</p> <p>22 company; right?</p> <p>23 A. That I don't remember and I think you</p> <p>24 would have to ask our accountant on that.</p> <p>25 Q. Do you know what the financial</p>

<p style="text-align: right;">Page 250</p> <p>1 L. Eber</p> <p>2 statements value the equity of Eber Connecticut at</p> <p>3 in late 2011 and early 2012?</p> <p>4 A. No.</p> <p>5 Q. Do you think that information is</p> <p>6 material to understanding what the value of Eber</p> <p>7 Connecticut might have been at that time?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A. I think you would have to ask an</p> <p>10 accountant for that, of that. I can't answer for</p> <p>11 you.</p> <p>12 Q. I want to ask you now about your</p> <p>13 relationship with Mike Gumaer.</p> <p>14 When did you first meet him?</p> <p>15 A. After my father died.</p> <p>16 Q. So you had not interacted with him</p> <p>17 before then?</p> <p>18 A. Never.</p> <p>19 Q. What was the nature of your</p> <p>20 relationship with Mike Gumaer during the first few</p> <p>21 years after your father died?</p> <p>22 A. He worked, I worked very close with</p> <p>23 him. He educated me to the trust and to</p> <p>24 transactions you know in settling an estate, my</p> <p>25 father's estate.</p>	<p style="text-align: right;">Page 252</p> <p>1 L. Eber</p> <p>2 Gumaer's legal advice.</p> <p>3 A. A will.</p> <p>4 Q. Did you pay him anything for that?</p> <p>5 A. I don't remember if he could have sent</p> <p>6 me to someone else in his firm that charged me for</p> <p>7 it.</p> <p>8 Q. Was Mr. Gumaer compensated for his</p> <p>9 role as a co-trustee of the trust?</p> <p>10 A. He didn't take any money from the</p> <p>11 trust. He was paid by the company and the reason</p> <p>12 he didn't take any money from the trust because it</p> <p>13 would have reduced the income to the beneficiaries</p> <p>14 of the trust. So he was paid by the company.</p> <p>15 Q. Was there ever any sort of</p> <p>16 documentation where Mr. Gumaer agreed to waive his</p> <p>17 right to compensation as a director, I meant a</p> <p>18 trustee? I am correcting myself.</p> <p>19 A. I don't believe so. In my father's</p> <p>20 will I waived my compensation as an executor of</p> <p>21 his estate.</p> <p>22 Q. What do you mean you waived?</p> <p>23 A. I served for free where the other</p> <p>24 executors, the bank and Mr. Gumaer, were paid, you</p> <p>25 know, whatever the law was.</p>
<p style="text-align: right;">Page 251</p> <p>1 L. Eber</p> <p>2 Q. At any point in time or -- withdrawn.</p> <p>3 At that time Mike Gumaer was a partner</p> <p>4 in the law firm of Nelson Hargrave.</p> <p>5 A. Nixon.</p> <p>6 Q. Nixon Hargrave?</p> <p>7 A. Yes.</p> <p>8 Q. Did you or Eber Brothers retain him as</p> <p>9 a lawyer for the company?</p> <p>10 A. Yes.</p> <p>11 Q. Did you ever retain him as your</p> <p>12 personal attorney?</p> <p>13 A. I used him as a personal attorney.</p> <p>14 Q. When did you start doing that?</p> <p>15 A. After my father died.</p> <p>16 Q. What kinds of things did you retain</p> <p>17 him for?</p> <p>18 A. He advised me legally. Send me</p> <p>19 different law specialists in his firm or what have</p> <p>20 you. Everything. Anything I had I needed a legal</p> <p>21 opinion on I would go through him.</p> <p>22 Q. And for personal matters?</p> <p>23 A. Both personal and business, yes.</p> <p>24 Q. So for personal matters give an</p> <p>25 example of something where you relied on Mr.</p>	<p style="text-align: right;">Page 253</p> <p>1 L. Eber</p> <p>2 Q. Was that your decision to serve for</p> <p>3 free?</p> <p>4 A. It was my father's wish and I observed</p> <p>5 it.</p> <p>6 Q. When did Mr. Gumaer retire from Nixon</p> <p>7 Hargrave or Nixon Peabody as it became?</p> <p>8 MR. CALIHAN: Objection to form.</p> <p>9 A. It is in there. I don't remember the</p> <p>10 date.</p> <p>11 MR. BROOK: What's the basis for the</p> <p>12 objection?</p> <p>13 MR. CALIHAN: I am not sure which</p> <p>14 relationship with the firm you are referring</p> <p>15 to. I think there were several but I am</p> <p>16 not --</p> <p>17 MR. BROOK: Understood.</p> <p>18 A. Thank you.</p> <p>19 MR. BROOK: Let's go to another</p> <p>20 exhibit. This is 47.</p> <p>21 (Plaintiffs' Exhibit 47, a two-page</p> <p>22 letter on the letterhead for Elliot W.</p> <p>23 Gumaer, Jr. dated January 2, 2001 Bates</p> <p>24 stamped January 8, 2001 and Bates number EB</p> <p>25 00001556 to 57, marked for identification,</p>

<p style="text-align: right;">Page 254</p> <p>1 L. Eber</p> <p>2 as of this date.)</p> <p>3 Q. Exhibit 47 is a two-page letter on the</p> <p>4 letterhead for Elliot W. Gumaer, Jr. dated January</p> <p>5 2, 2001 Bates stamped January 8, 2001 and Bates</p> <p>6 number EB 00001556 to 57.</p> <p>7 Do you recognize this document?</p> <p>8 A. Yes.</p> <p>9 Q. What is it?</p> <p>10 A. It is a letter from Mike Gumaer to</p> <p>11 myself about his retirement from Nixon Peabody.</p> <p>12 Q. And do you see on the back page there</p> <p>13 is a line below the signature of Mike Gumaer</p> <p>14 stating the terms and conditions of this letter</p> <p>15 are agreed by the Eber companies?</p> <p>16 A. Yes.</p> <p>17 Q. And is that your signature below?</p> <p>18 A. Yes.</p> <p>19 Q. Do you remember signing this document?</p> <p>20 A. I don't remember signing it but I did.</p> <p>21 It is January of '01.</p> <p>22 Q. And when is the last time that you</p> <p>23 remember seeing this document?</p> <p>24 A. I don't remember.</p> <p>25 Q. Do you have any reason to believe that</p>	<p style="text-align: right;">Page 256</p> <p>1 L. Eber</p> <p>2 propose to you the following A, I shall continue</p> <p>3 to waive any direct annual compensation as a</p> <p>4 trustee of the Allen Eber Trust. B, I shall</p> <p>5 continue as a director of the Eber companies</p> <p>6 without any compensation commensurate with my</p> <p>7 responsibilities as a director. And C, I shall</p> <p>8 continue to serve as a consultant to the companies</p> <p>9 and as counsel to you personally and as chief</p> <p>10 executive officer."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. The letter then continues in the next</p> <p>14 paragraph, "As compensation for all of these</p> <p>15 duties the Eber companies will pay me an annual</p> <p>16 consulting fee of forty thousand dollars payable</p> <p>17 quarterly on the first of February, May, August</p> <p>18 and November beginning February 1, 2001. This</p> <p>19 relationship shall remain in place until modified</p> <p>20 by you and me in the manner established by this</p> <p>21 letter."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And you agreed to those terms that he</p> <p>25 proposed?</p>
<p style="text-align: right;">Page 255</p> <p>1 L. Eber</p> <p>2 there are any amendments to this letter agreement?</p> <p>3 A. I don't know. I don't remember. I</p> <p>4 don't know.</p> <p>5 Q. Turning to the second page at the top,</p> <p>6 do you see he, Mike writes "As a director and</p> <p>7 consultant to the companies I have endorsed your</p> <p>8 strategic plan to grow our companies thus enabling</p> <p>9 us to compete in an industry that's changed</p> <p>10 radically over the years since your father's</p> <p>11 death."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know what he meant by referring</p> <p>15 to himself as a consultant to the companies?</p> <p>16 A. Yeah. He was into the business. My</p> <p>17 father put him right into the business to work</p> <p>18 with me and help me.</p> <p>19 Q. So is it fair to say that Mike Gumaer</p> <p>20 did nonlegal work for the companies?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 A. He did legal work. He did consulting.</p> <p>23 He did everything.</p> <p>24 Q. Second paragraph on page 2 reads "With</p> <p>25 the foregoing as historical records I would</p>	<p style="text-align: right;">Page 257</p> <p>1 L. Eber</p> <p>2 A. Yes.</p> <p>3 Q. How long did the annual consulting fee</p> <p>4 of forty thousand dollars continue for?</p> <p>5 A. As long as we could pay it and I don't</p> <p>6 have the date that it changed, but it had to be</p> <p>7 after Wells foreclosed on us and we didn't have</p> <p>8 the money to pay him.</p> <p>9 Q. After that point was his consulting</p> <p>10 fee reduced?</p> <p>11 A. Yes.</p> <p>12 Q. What was it reduced to?</p> <p>13 A. I don't remember.</p> <p>14 MR. BROOK: Let's go to the next</p> <p>15 exhibit. This will be Plaintiffs' Exhibit</p> <p>16 48.</p> <p>17 (Plaintiffs' Exhibit 48, an e-mail</p> <p>18 from Mike Gumaer to Wendy Eber and Lester</p> <p>19 Eber dated October 29, 2013 bearing Bates</p> <p>20 number GUM 000023, marked for</p> <p>21 identification, as of this date.)</p> <p>22 Q. Exhibit 48 is an e-mail from Mike</p> <p>23 Gumaer to Wendy Eber and Lester Eber dated October</p> <p>24 29, 2013 bearing Bates number GUM 000023.</p> <p>25 Do you recognize this document?</p>

65 (Pages 254 - 257)

<p style="text-align: right;">Page 258</p> <p>1 L. Eber</p> <p>2 A. I got it so I do, yes.</p> <p>3 Q. I would like to draw your attention to</p> <p>4 the second paragraph of Mike's e-mail. He writes</p> <p>5 "You will recall I hope our conversation last</p> <p>6 December when I was asked to continue as</p> <p>7 director/trustee/confidant."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. "While I was prepared to conclude my</p> <p>11 relationship after 40 or so years, I was happy to</p> <p>12 continue. My annual compensation for some time</p> <p>13 has been twenty two thousand dollars payable in</p> <p>14 quarterly installments."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Does that refresh your recollection as</p> <p>18 to what the compensation amount was reduced to</p> <p>19 from forty thousand dollars?</p> <p>20 A. I knew it was reduced but I didn't</p> <p>21 remember the amount.</p> <p>22 Q. And is it your best recollection that</p> <p>23 twenty two thousand dollars was the amount?</p> <p>24 A. It is very possible.</p> <p>25 Q. Which of the Eber companies was</p>	<p style="text-align: right;">Page 260</p> <p>1 L. Eber</p> <p>2 A. Would you repeat that again for me?</p> <p>3 Q. Sure.</p> <p>4 The proposal that Mike had made in</p> <p>5 2001 is that he would --</p> <p>6 A. Yes.</p> <p>7 Q. -- be counsel to you personally --</p> <p>8 A. Yes.</p> <p>9 Q. -- as chief executive officer without</p> <p>10 seeking compensation beyond an annual consulting</p> <p>11 fee of forty thousand dollars?</p> <p>12 A. Yes. That would be consistent.</p> <p>13 Q. To whom did you disclose the terms of</p> <p>14 your engagement of Mike Gumaer pursuant to this</p> <p>15 letter?</p> <p>16 A. To this letter it would be Wendy Eber.</p> <p>17 Q. And were these terms disclosed to</p> <p>18 anyone else?</p> <p>19 A. I don't -- I don't believe so.</p> <p>20 Basically when Eber could have been I don't know.</p> <p>21 I would like you to read the last paragraph.</p> <p>22 Q. You are talking about the last</p> <p>23 paragraph on Exhibit 48?</p> <p>24 A. Yes. You like to read paragraphs. So</p> <p>25 I'd like you to.</p>
<p style="text-align: right;">Page 259</p> <p>1 L. Eber</p> <p>2 responsible for paying Mike Gumaer's consulting</p> <p>3 fee?</p> <p>4 A. Eber Wine and Liquor originally paid</p> <p>5 him.</p> <p>6 Q. And at a certain point was the</p> <p>7 responsibility changed to Eber Connecticut?</p> <p>8 A. Yes.</p> <p>9 Q. What about after the Alexbay</p> <p>10 acquisition of Eber Connecticut, who paid the</p> <p>11 consulting fee then?</p> <p>12 A. I believe -- I don't know. I would</p> <p>13 have to find out. I don't know.</p> <p>14 Q. Is it correct that at some point the</p> <p>15 consulting fee was reduced even more below twenty</p> <p>16 two thousand dollars?</p> <p>17 A. It is very possible.</p> <p>18 Q. Did you ever pay Mike Gumaer directly</p> <p>19 for work that he did as an attorney for you</p> <p>20 personally?</p> <p>21 A. I don't remember. I believe most of</p> <p>22 it was paid through the company.</p> <p>23 Q. And that procedure that you just</p> <p>24 described would be consistent with the proposal</p> <p>25 that Mike made in Exhibit 47; correct?</p>	<p style="text-align: right;">Page 261</p> <p>1 L. Eber</p> <p>2 Q. If you would like to read it aloud I</p> <p>3 will allow you to do so now.</p> <p>4 A. No, you're the --</p> <p>5 MR. RAMSEY: You want to read it go</p> <p>6 ahead.</p> <p>7 A. Yeah. I am taking over your job.</p> <p>8 "I wish to accommodate you two as</p> <p>9 members of a team. Lord knows that Lester has</p> <p>10 committed an incredible amount to bring about the</p> <p>11 company's success. I am prepared to do my share</p> <p>12 if the kitty calls for it. Please give me your</p> <p>13 thoughts. All the best, Mike."</p> <p>14 Q. Do you have an understanding as to</p> <p>15 what Mike meant when he said I am prepared to do</p> <p>16 my share if the kitty calls for it?</p> <p>17 A. I think -- I just think he wants --</p> <p>18 supportive as he can be to help us through a</p> <p>19 difficult period.</p> <p>20 Q. Now the two sentences immediately or</p> <p>21 the three sentences I guess it is actually -- I am</p> <p>22 not going to count the number of sentences. Let's</p> <p>23 read the part in between the part that I read</p> <p>24 earlier and the part that you just read. It says</p> <p>25 "I have been paid eleven thousand dollars so far</p>

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<p style="text-align: right;">Page 262</p> <p>1 L. Eber</p> <p>2 this year. In August, at Wendy's request, I</p> <p>3 agreed to defer receipt until October to ease the</p> <p>4 cash flow during the summer. It is now a day or</p> <p>5 so shy of November. Two months remain to complete</p> <p>6 the annual commitment. It could be that you are</p> <p>7 unaware that no compensation has been paid since</p> <p>8 July."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. So he was asking you for money; right?</p> <p>12 A. Yes.</p> <p>13 Q. And have you ever flattered someone to</p> <p>14 get them to give you money?</p> <p>15 MR. RAMSEY: Form.</p> <p>16 A. No. Flatter them, I don't know what</p> <p>17 you mean.</p> <p>18 MR. BROOK: I am getting pretty close</p> <p>19 to the end. So we don't we take another</p> <p>20 break and I will try to streamline it.</p> <p>21 THE VIDEOGRAPHER: This marks the end</p> <p>22 of media unit number five in the videotaped</p> <p>23 deposition of Lester Eber. We are going off</p> <p>24 the record. The time is 4:16.</p> <p>25 (Recess taken.)</p>	<p style="text-align: right;">Page 264</p> <p>1 L. Eber</p> <p>2 A. No.</p> <p>3 Q. And so you as of today received the</p> <p>4 750 shares of class B junior preferred stock at no</p> <p>5 cost?</p> <p>6 MR. RAMSEY: Form.</p> <p>7 Q. Correct?</p> <p>8 MR. CALIHAN: Form.</p> <p>9 A. I don't remember putting any in. I</p> <p>10 would have to go back and check but I don't</p> <p>11 remember. It's possible but I don't remember.</p> <p>12 Q. We talked about earlier the letters</p> <p>13 that you sent to your sister Sally and to your</p> <p>14 niece Audrey Hays offering them an opportunity to</p> <p>15 participate in the line of credit note.</p> <p>16 Do you remember that?</p> <p>17 A. Yes.</p> <p>18 MR. BROOK: I would like to make one</p> <p>19 of those an exhibit. We are up to 48.</p> <p>20 MR. RAMSEY: 49.</p> <p>21 MR. BROOK: 49.</p> <p>22 (Plaintiffs' Exhibit 49, a letter on</p> <p>23 Eber Brothers Wine and Liquor Corp.</p> <p>24 letterhead signed by Lester Eber Bates</p> <p>25 number KSH 00004 dated April 2, 2010, marked</p>
<p style="text-align: right;">Page 263</p> <p>1 L. Eber</p> <p>2 THE VIDEOGRAPHER: This marks the</p> <p>3 beginning of media unit number six in the</p> <p>4 videotaped deposition of Lester Eber. We</p> <p>5 are going on the record. The time is 4:27.</p> <p>6 BY MR. BROOK:</p> <p>7 Q. Just as a point of reference, can you</p> <p>8 please find Exhibit 43? That was the February</p> <p>9 2017 corporate documents.</p> <p>10 MR. CALIHAN: Written consent?</p> <p>11 MR. BROOK: Yes.</p> <p>12 MR. RAMSEY: There you go Exhibit 43.</p> <p>13 Q. Now on page 2 of this document it has</p> <p>14 the resolution. I am sorry. Page 3 there is the</p> <p>15 agreement to reimburse the corporation at its</p> <p>16 request for up to 37,500 dollars worth of</p> <p>17 expenses.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Have you as of now provided any of the</p> <p>21 37,500 dollars to Eber Brothers Wine and Liquor</p> <p>22 Corporation?</p> <p>23 A. No.</p> <p>24 Q. Have you been asked to put in any</p> <p>25 money?</p>	<p style="text-align: right;">Page 265</p> <p>1 L. Eber</p> <p>2 for identification, as of this date.)</p> <p>3 Q. Exhibit 49 is a letter on Eber</p> <p>4 Brothers Wine and Liquor Corp. letterhead signed</p> <p>5 by Lester Eber Bates number KSH 00004 dated April</p> <p>6 2, 2010.</p> <p>7 Do you recognize this document?</p> <p>8 A. Yes.</p> <p>9 Q. What is it?</p> <p>10 A. It's a request to ask for my sister to</p> <p>11 invest in the company in Connecticut.</p> <p>12 Q. And in this letter is it fair to say</p> <p>13 that you describe the business as one that is</p> <p>14 struggling?</p> <p>15 A. Yes.</p> <p>16 Q. And in paragraph 4 you said "As a</p> <p>17 result of the business' financial needs,</p> <p>18 Connecticut's growth opportunities and our failure</p> <p>19 to find a financial institution to provide us with</p> <p>20 an adequate financial option, I offer to</p> <p>21 personally loan the company the capital it needed</p> <p>22 to meet its projected obligations this year. The</p> <p>23 amount of the loan is 1.5 million dollars. The</p> <p>24 loan is secured by the Eber Brothers Wine and</p> <p>25 Liquor and Metro's equity interest in our</p>

<p style="text-align: right;">Page 266</p> <p>1 L. Eber</p> <p>2 Connecticut business. The board of directors</p> <p>3 recently approved the loan documents as well as</p> <p>4 our security arrangement."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Were those statements accurate?</p> <p>8 A. I believe so.</p> <p>9 Q. Now how had the board approved the</p> <p>10 loan documents?</p> <p>11 A. I don't remember.</p> <p>12 Q. Do you recall there was a board</p> <p>13 meeting at some point where the board went over</p> <p>14 the preexisting loan documents and then ratified</p> <p>15 them after the fact?</p> <p>16 A. I don't remember.</p> <p>17 Q. Were there ever any board meetings</p> <p>18 that you can recall when no minutes of those</p> <p>19 meetings were created?</p> <p>20 A. I don't remember.</p> <p>21 Q. Looking at the next paragraph you</p> <p>22 wrote "For the next 30 days I will offer you the</p> <p>23 opportunity to participate in the loan. If you</p> <p>24 desire to participate you would be responsible for</p> <p>25 funding one third of any advances to the company."</p>	<p style="text-align: right;">Page 268</p> <p>1 L. Eber</p> <p>2 to find out, remember. I don't remember which</p> <p>3 one.</p> <p>4 Q. Now let's look at the first line of</p> <p>5 that paragraph.</p> <p>6 You limited the opportunity to 30 days</p> <p>7 from the date of this letter; correct?</p> <p>8 A. Yes.</p> <p>9 Q. Why did you choose to do that?</p> <p>10 A. It was probably on the advice of</p> <p>11 counsel.</p> <p>12 Q. So can you think of any business</p> <p>13 reasons why you couldn't have allowed the</p> <p>14 opportunity to participate to continue past 30</p> <p>15 days?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 A. Business reason. The company needed</p> <p>18 money and I had to know where we were going. If I</p> <p>19 had to come up or take money out of my retirement</p> <p>20 more to fund it or get some help.</p> <p>21 Q. Had you saved money for your</p> <p>22 retirement prior to this point?</p> <p>23 A. Yes.</p> <p>24 Q. How much money had you saved?</p> <p>25 A. I don't have an amount. I had</p>
<p style="text-align: right;">Page 267</p> <p>1 L. Eber</p> <p>2 To date I have advanced the company of</p> <p>3 approximately five hundred thousand dollars.</p> <p>4 Therefore, if you decide to participate in the</p> <p>5 loan you would be required to remit to me</p> <p>6 approximately sixteen thousand dollars to</p> <p>7 reimburse me for my advances. Future advances</p> <p>8 would be in minimum increments of approximately</p> <p>9 fifty thousand dollars for each of us and could be</p> <p>10 done on a monthly basis."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. How did you come up with these terms</p> <p>14 to offer to your sister?</p> <p>15 A. I was told about the financial</p> <p>16 situation of the company and this is what would be</p> <p>17 necessary to -- for them to invest in it.</p> <p>18 Q. Who told you that?</p> <p>19 A. It was probably on advice of counsel.</p> <p>20 Q. So counsel advised you about the</p> <p>21 financial terms to provide here?</p> <p>22 A. Yeah, I believe so.</p> <p>23 Q. Which counsel are you referring to?</p> <p>24 A. I don't remember. It was counsel but</p> <p>25 I would have to -- I would have to go back and try</p>	<p style="text-align: right;">Page 269</p> <p>1 L. Eber</p> <p>2 annuities and as I told you, I eventually gave up</p> <p>3 my pension plan which was paying me and --</p> <p>4 Q. I am sorry. Go ahead.</p> <p>5 A. And so I had saved over the years. I</p> <p>6 have been with the company since 1959, 1960.</p> <p>7 Q. And was it from your retirement</p> <p>8 savings that you put in all the money that you</p> <p>9 loaned to Eber Brothers and Eber Metro?</p> <p>10 A. Some of it.</p> <p>11 Q. Where else did you get money from?</p> <p>12 A. Investments I made I sold. Stock</p> <p>13 investments, et cetera.</p> <p>14 Q. Any other sources?</p> <p>15 A. No. It was all money from savings.</p> <p>16 Q. And as of today, do you still have</p> <p>17 retirement savings?</p> <p>18 A. I have some. Not what I had before.</p> <p>19 Q. Do you have other investments besides</p> <p>20 retirement savings?</p> <p>21 A. I have a few stocks, nothing big.</p> <p>22 Q. What's the current approximate account</p> <p>23 value of your retirement savings account?</p> <p>24 A. I don't have it with me.</p> <p>25 Q. Is it more than ten thousand dollars?</p>

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<p style="text-align: right;">Page 270</p> <p>1 L. Eber</p> <p>2 A. Yeah. I would say so.</p> <p>3 Q. Is it more than one million dollars?</p> <p>4 A. I don't have an exact amount for you</p> <p>5 on it. I just would have to go back and look at</p> <p>6 it.</p> <p>7 Q. What would you look at to determine</p> <p>8 that?</p> <p>9 A. Different annuities I have and then my</p> <p>10 tax situation because whenever I had to take money</p> <p>11 out I had to pay taxes on it. You know, it was</p> <p>12 accumulating tax free, but when it comes out of</p> <p>13 the annuity you have to pay the income tax on it.</p> <p>14 Q. So you've got annuities in tax</p> <p>15 deferred accounts of some type?</p> <p>16 A. Yeah.</p> <p>17 Q. And what are the amounts the annuity</p> <p>18 is paying?</p> <p>19 A. Some pay three percent. I can't get</p> <p>20 that anymore. I haven't been able to get that for</p> <p>21 quite a while.</p> <p>22 Q. So do any of your current annuities</p> <p>23 have a three percent?</p> <p>24 A. No.</p> <p>25 Q. What are the percentages on your</p>	<p style="text-align: right;">Page 272</p> <p>1 L. Eber</p> <p>2 Is the twenty five thousand dollars a</p> <p>3 month in addition to the 833 dollars a month you</p> <p>4 receive for lobbying?</p> <p>5 A. Yes.</p> <p>6 Q. So it's the total amount from Southern</p> <p>7 that's 25,833 dollars per month?</p> <p>8 A. Yes.</p> <p>9 Q. How long do you expect that to</p> <p>10 continue for?</p> <p>11 A. I do not know.</p> <p>12 Q. Again, there is nothing in writing</p> <p>13 where Southern is committed to paying you twenty</p> <p>14 five thousand dollars a month; correct?</p> <p>15 A. No. That's correct, yes.</p> <p>16 Q. After sending this letter Exhibit 49</p> <p>17 to Sally, did you speak with her about the</p> <p>18 opportunity?</p> <p>19 A. Yes.</p> <p>20 Q. When was that?</p> <p>21 A. During that period. I don't remember</p> <p>22 the time but I did ask her. She said I want to</p> <p>23 get money out. I don't want to put money in.</p> <p>24 Q. Did she say anything else?</p> <p>25 A. No. That was about it.</p>
<p style="text-align: right;">Page 271</p> <p>1 L. Eber</p> <p>2 current annuities?</p> <p>3 A. I don't know if it is one and a half,</p> <p>4 two. I don't remember.</p> <p>5 Q. In terms of your other investments</p> <p>6 that are not retirement savings, what is the</p> <p>7 approximate value of those investments today?</p> <p>8 A. Geez, I'd have to go back and look. I</p> <p>9 don't think it is anything -- I don't know. I</p> <p>10 have to go back and look to give you an answer on</p> <p>11 it.</p> <p>12 Q. Do you own any real property?</p> <p>13 A. My home.</p> <p>14 Q. And any other real property?</p> <p>15 A. No.</p> <p>16 Q. What is the approximate value of your</p> <p>17 home?</p> <p>18 A. I think maybe 230, 240,000.</p> <p>19 Q. Where is that located?</p> <p>20 A. In Rochester.</p> <p>21 Q. Are you continuing to receive twenty</p> <p>22 five thousand dollars a month from Southern?</p> <p>23 A. Yes.</p> <p>24 Q. Is that in addition to or -- let me</p> <p>25 rephrase it.</p>	<p style="text-align: right;">Page 273</p> <p>1 L. Eber</p> <p>2 Q. Did you help explain to her any of the</p> <p>3 particular terms of your offer?</p> <p>4 A. I tried to.</p> <p>5 Q. So what did you tell her about the</p> <p>6 security agreement?</p> <p>7 A. I don't remember about, talking to her</p> <p>8 about the security agreement.</p> <p>9 Q. Did she ask you what it means when it</p> <p>10 says the loan is secured by the equity interest in</p> <p>11 the Connecticut business?</p> <p>12 A. No. It wasn't much of a discussion.</p> <p>13 Q. What was your understanding of what it</p> <p>14 meant to say that the loan is secured by the</p> <p>15 Connecticut business?</p> <p>16 A. That means that like I would have</p> <p>17 rights against Connecticut to collect my money.</p> <p>18 Q. Did you have any conversations with</p> <p>19 Audrey Hays after she received a similar letter to</p> <p>20 this?</p> <p>21 A. I don't remember any. It could have</p> <p>22 been something but I don't remember any.</p> <p>23 Q. What kind of information did the</p> <p>24 trustees provide to the trust beneficiaries about</p> <p>25 the financial performance of the assets held by</p>

<p style="text-align: right;">Page 274</p> <p>1 L. Eber</p> <p>2 the trust? Did it provide anything on a regular</p> <p>3 basis?</p> <p>4 A. Yeah, I believe so.</p> <p>5 Q. What was that?</p> <p>6 A. They would send I believe quarterly</p> <p>7 statements to the trust, to the beneficiaries.</p> <p>8 Q. Were there also annual letters?</p> <p>9 A. Yes.</p> <p>10 Q. Did you have any involvement in</p> <p>11 drafting those letters?</p> <p>12 A. The only involvement I had when the</p> <p>13 company couldn't pay what they had been getting</p> <p>14 before because the company didn't have any cash, I</p> <p>15 personally supplemented it to make it what it was</p> <p>16 before.</p> <p>17 Q. How much money are we talking about</p> <p>18 putting in there?</p> <p>19 A. I think it was four thousand a piece.</p> <p>20 Q. So four thousand times how many people</p> <p>21 then?</p> <p>22 A. Two.</p> <p>23 Q. So that was at a time before your</p> <p>24 sister passed?</p> <p>25 A. My sister, yeah. She was my sister</p>	<p style="text-align: right;">Page 276</p> <p>1 L. Eber</p> <p>2 Q. This is a letter on Canandaigua</p> <p>3 letterhead dated December 18, 2012 signed by Rick</p> <p>4 Hawks.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recognize this letter?</p> <p>8 A. Yeah. It looks familiar. I probably</p> <p>9 got one too.</p> <p>10 Q. Did you review this before it was sent</p> <p>11 out?</p> <p>12 A. I could have. I don't remember. He</p> <p>13 would send letters out without -- I didn't know</p> <p>14 about it. I mean he would send the letters out</p> <p>15 before I could have reviewed it. Sometimes when I</p> <p>16 didn't review them.</p> <p>17 Q. I would like to direct your attention</p> <p>18 to the third paragraph of this letter. There it</p> <p>19 states "The trust does hold various Eber Brothers</p> <p>20 securities. The focus with business limited to</p> <p>21 Connecticut has required the company to downsize</p> <p>22 and execute a modified business plan. The company</p> <p>23 will not be declaring and paying an annual</p> <p>24 dividend on its class A, class B or preferred</p> <p>25 stock this year. Earnings are being used to</p>
<p style="text-align: right;">Page 275</p> <p>1 L. Eber</p> <p>2 and then Audrey Hays.</p> <p>3 Q. Was that a one time occasion?</p> <p>4 A. You know I think it could have been</p> <p>5 more but I think it might have been one. I don't</p> <p>6 remember.</p> <p>7 Q. Do you remember approximately what</p> <p>8 year that was?</p> <p>9 A. No.</p> <p>10 Q. As far as the annual letters went,</p> <p>11 those were typically sent on bank letterhead;</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. And did you have the opportunity to</p> <p>15 review those letters before they were sent to the</p> <p>16 beneficiaries?</p> <p>17 A. Sometimes.</p> <p>18 Q. I am going to show you one that was</p> <p>19 previously marked as Plaintiffs' Exhibit 4.</p> <p>20 MR. BROOK: I have a couple of spares</p> <p>21 if you guys want.</p> <p>22 MR. CALIHAN: This is 50?</p> <p>23 MR. BROOK: This is previously marked</p> <p>24 4.</p> <p>25 MR. CALIHAN: Oh, okay.</p>	<p style="text-align: right;">Page 277</p> <p>1 L. Eber</p> <p>2 invest and improve the business."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Was that an accurate statement at the</p> <p>6 time this letter was sent?</p> <p>7 A. I believe so.</p> <p>8 Q. So as of December 18, 2012 the trust</p> <p>9 held securities that had a focus on business in</p> <p>10 Connecticut; is that what you are saying?</p> <p>11 A. You know like Hawks didn't run this by</p> <p>12 me and you know, you have deposed him and I think</p> <p>13 he should be the one that you should talk to on</p> <p>14 this or his lawyer.</p> <p>15 Q. So now is it fair to say that you</p> <p>16 realize that your earlier testimony that this was</p> <p>17 an accurate statement at the time was incorrect?</p> <p>18 A. What? What was inaccurate?</p> <p>19 Q. Just a couple of moments ago I asked</p> <p>20 you if that was an accurate description of what</p> <p>21 the trusts holdings were as of December 18, 2012</p> <p>22 and you said you thought so?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 A. I was confused and I think if</p> <p>25 Connecticut had been -- if you go back to you --</p>

70 (Pages 274 - 277)

<p style="text-align: right;">Page 278</p> <p>1 L. Eber</p> <p>2 know this was December 18, 2012 and the</p> <p>3 foreclosure was in February; wasn't it? So they</p> <p>4 didn't hold Connecticut if that's the...</p> <p>5 Q. When you saw this at the time in</p> <p>6 December of 2012, did you do anything to try to</p> <p>7 correct the misstatement?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A. I think they -- there were -- Wendy</p> <p>10 Eber did do something on that to get it because it</p> <p>11 wasn't right.</p> <p>12 Q. What did Wendy Eber do?</p> <p>13 A. I don't remember. But I know it was a</p> <p>14 mistake and it is very possible he sent this out</p> <p>15 without showing it to us.</p> <p>16 Q. Why was it Wendy Eber's responsibility</p> <p>17 to do anything to correct this letter sent by a</p> <p>18 co-trustee?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A. She was the financial person who</p> <p>21 watched the finances at that time.</p> <p>22 Q. What finances?</p> <p>23 A. CFO of the companies, the Eber</p> <p>24 companies.</p> <p>25 Q. Did she have any role or</p>	<p style="text-align: right;">Page 280</p> <p>1 L. Eber</p> <p>2 Q. In hindsight, do you believe you</p> <p>3 should have contacted either Audrey Hays or Sally</p> <p>4 Kleeberg or both of them after you saw this</p> <p>5 letter?</p> <p>6 MR. RAMSEY: Form. Go ahead.</p> <p>7 A. Yes. If I had seen it before it came</p> <p>8 out I would have known that it should have been</p> <p>9 corrected.</p> <p>10 Q. I am going to show you a new exhibit.</p> <p>11 This is I believe now 50.</p> <p>12 (Plaintiffs' Exhibit 50, a chain of</p> <p>13 two e-mails possible another e-mail that</p> <p>14 appears to have been redacted Bates number</p> <p>15 EB 00031202, marked for identification, as</p> <p>16 of this date.)</p> <p>17 Q. Plaintiffs' Exhibit 50 is a chain of</p> <p>18 two e-mails possibly another e-mail that appears</p> <p>19 to have been redacted. The document bears Bates</p> <p>20 number EB 00031202. The top e-mail is from Wendy</p> <p>21 Eber to Lester Eber and Mike Gumaer dated January</p> <p>22 10, 2013. The subject is Allen Eber Trust.</p> <p>23 Do you see that?</p> <p>24 A. Mm-hmm.</p> <p>25 Q. Is that a yes?</p>
<p style="text-align: right;">Page 279</p> <p>1 L. Eber</p> <p>2 responsibility in connection with the Allen Eber</p> <p>3 Trust?</p> <p>4 A. No. She was not involved in the Allen</p> <p>5 Eber Trust.</p> <p>6 Q. You were a co-trustee of the trust</p> <p>7 though; is that right?</p> <p>8 A. That's correct.</p> <p>9 Q. So --</p> <p>10 A. As I told you, this letter shouldn't</p> <p>11 have been sent out and it was a mistake and I</p> <p>12 refer you to your deposition with Hawks which you</p> <p>13 had in Rochester and I don't know if you are going</p> <p>14 to see or talk to him again. This was something</p> <p>15 that was handled by Richard Hawks. Now Richard,</p> <p>16 what's his name? Yeah, Richard Hawks.</p> <p>17 Q. Did you contact either Sally Kleeberg</p> <p>18 or Audrey Hays after seeing this letter to advise</p> <p>19 them of the sale or the transfer rather of the</p> <p>20 Eber Connecticut business to Alexbay?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 A. I don't remember doing that.</p> <p>23 Q. Why not?</p> <p>24 A. I don't know.</p> <p>25 MR. CALIHAN: Objection to form.</p>	<p style="text-align: right;">Page 281</p> <p>1 L. Eber</p> <p>2 A. Yes.</p> <p>3 Q. The e-mail states "Lester and Mike,</p> <p>4 attached is the December 2012 statement for the</p> <p>5 trust of Allen Eber from Canandaigua Bank. It</p> <p>6 values Eber stock at approximately 655,000</p> <p>7 dollars. It should be zero per our conversation</p> <p>8 in June with Rick Hawks. Regards Wendy."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know what valuation she is</p> <p>12 referring to?</p> <p>13 A. No.</p> <p>14 Q. Do you know what the 655,000 dollars</p> <p>15 number is?</p> <p>16 A. No.</p> <p>17 Q. Do you know where Canandaigua got that</p> <p>18 number from?</p> <p>19 A. No.</p> <p>20 Q. Do you know what Wendy was referring</p> <p>21 to when she referred to a conversation in June</p> <p>22 with Rick Hawks?</p> <p>23 A. I would believe that she told him that</p> <p>24 it should be zero. That the Eber Brothers stock</p> <p>25 should be valued at zero per our conversation in</p>


<p style="text-align: right;">Page 282</p> <p>1 L. Eber</p> <p>2 June. That's what she is saying.</p> <p>3 Q. So at this point in time Wendy was</p> <p>4 pointing out to you and to Mike Gumaer that the</p> <p>5 statement from Canandaigua Bank for the trust that</p> <p>6 accompanied the letter we just looked at contained</p> <p>7 a valuation of Eber Brothers stock that was</p> <p>8 incorrect?</p> <p>9 MR. CALIHAN: Form.</p> <p>10 Q. Is that right?</p> <p>11 MR. CALIHAN: Objection to form.</p> <p>12 A. Yes.</p> <p>13 Q. What, if anything, did you do or tell</p> <p>14 someone else to do after learning about this?</p> <p>15 A. I believe we talked to Rick Hawks to</p> <p>16 get the correct valuation on there.</p> <p>17 Q. And what did Rick say?</p> <p>18 A. I don't remember.</p> <p>19 Q. Was the valuation of the Eber Brothers</p> <p>20 stock and the trust statements from Canandaigua</p> <p>21 Bank ever changed from 655,000 dollars?</p> <p>22 A. I don't remember.</p> <p>23 Q. Did you personally contact Sally</p> <p>24 Kleeberg or Audrey Hays after realizing there had</p> <p>25 been an incorrect value for the Eber Brothers</p>	<p style="text-align: right;">Page 284</p> <p>1 L. Eber</p> <p>2 and grew the business before then. The company</p> <p>3 went from thirty million to six hundred million</p> <p>4 from 1970 to the time it was disbanded.</p> <p>5 Q. So I am not sure I understood that.</p> <p>6 What was your responsibility, if any,</p> <p>7 given your role as co-trustee in terms of being</p> <p>8 aware of your co-trustee's activities with respect</p> <p>9 to the trust?</p> <p>10 MR. RAMSEY: Form.</p> <p>11 A. My -- I repeat my job was to manage in</p> <p>12 the business and I reported on the business to the</p> <p>13 other trustees.</p> <p>14 Q. So you are saying you did not believe</p> <p>15 that you had any responsibility to monitor or</p> <p>16 check in on the activities of the other</p> <p>17 co-trustees with respect to the trust?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A. I am not an accountant. I am not a</p> <p>20 lawyer. I am a businessman and that was my job to</p> <p>21 report on the business. And to manage the</p> <p>22 business of what was there.</p> <p>23 Q. So if one of your co-trustees was</p> <p>24 stealing money from the trust, did you have any</p> <p>25 responsibility there?</p>
<p style="text-align: right;">Page 283</p> <p>1 L. Eber</p> <p>2 stock?</p> <p>3 A. No. That would have been the job of</p> <p>4 the bank who managed the trust.</p> <p>5 Q. Why do you say that?</p> <p>6 A. Because everything in the trust came</p> <p>7 from the bank. They did all the paperwork. They</p> <p>8 did everything.</p> <p>9 Q. And so you understood that --</p> <p>10 A. It was the obligation of the bank to</p> <p>11 correct it.</p> <p>12 Q. So it was your understanding that if</p> <p>13 the bank made a mistake with respect to the trust</p> <p>14 it was the bank's obligation alone to correct it?</p> <p>15 A. Well, yes. The bank handled all the</p> <p>16 valuations. Did all the paperwork. Sent out the</p> <p>17 letters. That's what they were there for to do</p> <p>18 all of that. That wasn't my job.</p> <p>19 Q. What was your understanding of your</p> <p>20 responsibilities as a co-trustee to monitor or</p> <p>21 supervise the activities of your co-trustees?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A. I did -- I worked at the companies and</p> <p>24 did the business. Did the best I could to keep</p> <p>25 the business afloat through very difficult periods</p>	<p style="text-align: right;">Page 285</p> <p>1 L. Eber</p> <p>2 A. I would be very upset and if I found</p> <p>3 out about it, but I don't do audits. I am not an</p> <p>4 auditor. I am not an accountant. I imagine there</p> <p>5 are people that do that.</p> <p>6 Q. Even though you are not an auditor, if</p> <p>7 you discovered that --</p> <p>8 A. If I discovered that yes, I would</p> <p>9 definitely want it corrected.</p> <p>10 Q. So you understood that as a co-trustee</p> <p>11 of the trust under New York law you had an</p> <p>12 obligation to provide truthful information to the</p> <p>13 beneficiaries; correct?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 A. I provided truthful information to the</p> <p>16 other trustees and it was up to the trust to</p> <p>17 provide the information to the beneficiaries. I</p> <p>18 did not control the trust. There were three</p> <p>19 members of the trust. I was one of them.</p> <p>20 Q. What was the basis for your belief</p> <p>21 that you did not have an obligation to correct</p> <p>22 false statements about the trust that were given</p> <p>23 by a co-trustee to beneficiaries?</p> <p>24 MR. RAMSEY: Form. I think we asked</p> <p>25 this three or four times.</p>

<p style="text-align: right;">Page 286</p> <p>1 L. Eber</p> <p>2 MR. BROOK: I am asking for the basis.</p> <p>3 MR. RAMSEY: We will try it one more</p> <p>4 time.</p> <p>5 A. Could you repeat your question again?</p> <p>6 Q. Sure.</p> <p>7 I am asking now for the basis for this</p> <p>8 understanding. Where did you get the</p> <p>9 understanding that you did not have an obligation</p> <p>10 to correct misstatements of fact that were made by</p> <p>11 your co-trustee to the beneficiaries of the trust?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. I corrected it by -- my obligation was</p> <p>14 to the trust and I told the trust, to Hawks or</p> <p>15 with Gumaer to that this was wrong or and if I</p> <p>16 could do anything I would but that's where I</p> <p>17 worked through. My line of communication was</p> <p>18 through the trust. The trust would -- it was</p> <p>19 their obligation to notify the beneficiaries like</p> <p>20 they did with everything else and the money they</p> <p>21 disbursed to them.</p> <p>22 MR. BROOK: Let's go to another</p> <p>23 exhibit. This will be 51.</p> <p>24 (Plaintiffs' Exhibit 51, an e-mail</p> <p>25 from Mike Gumaer to Lester Eber copying</p>	<p style="text-align: right;">Page 288</p> <p>1 L. Eber</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Then it appears that you wrote an</p> <p>5 e-mail on November 25, 2013 addressed to Mike and</p> <p>6 Rick.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you believe that was Mike Gumaer</p> <p>10 and Rick Hawks?</p> <p>11 A. Yes.</p> <p>12 Q. And you said "I suggest we change the</p> <p>13 paragraph on the first page which says the trust</p> <p>14 does hold various Eber securities and at the</p> <p>15 bottom of the holdings page of various</p> <p>16 non-marketable Eber Brothers and Co. stock</p> <p>17 holdings. What are your suggestions?"</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. So if we look back at Exhibit 4, the</p> <p>21 paragraph that you suggested be changed was the</p> <p>22 one that I just read a few moments ago; correct?</p> <p>23 A. Mm-hmm.</p> <p>24 Q. Yes?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 287</p> <p>1 L. Eber</p> <p>2 Wendy Eber dated December 1, 2013 bearing</p> <p>3 Bates numbers EB 00031106, marked for</p> <p>4 identification, as of this date.)</p> <p>5 Q. Plaintiffs' Exhibit 51 is an e-mail</p> <p>6 from Mike Gumaer to Lester Eber copying Wendy Eber</p> <p>7 dated December 1, 2013 bearing Bates numbers EB</p> <p>8 00031106.</p> <p>9 Do you recognize this e-mail chain?</p> <p>10 A. This was sent to me from Wendy.</p> <p>11 Q. Well, let's go back. It is from</p> <p>12 bottom to top. It is in chronological order.</p> <p>13 First, there is an e-mail from Janet</p> <p>14 Lissow to you?</p> <p>15 A. Mm-hmm.</p> <p>16 Q. Right?</p> <p>17 A. Yes.</p> <p>18 Q. Who is Janet Lissow?</p> <p>19 A. My secretary, administrative</p> <p>20 assistant.</p> <p>21 Q. Is she still in that role?</p> <p>22 A. Yes.</p> <p>23 Q. And then she was attaching something</p> <p>24 with the subject line Allen Eber Trust December</p> <p>25 2012.</p>	<p style="text-align: right;">Page 289</p> <p>1 L. Eber</p> <p>2 Q. The one that says the trust does hold</p> <p>3 various Eber securities?</p> <p>4 A. Mm-hmm.</p> <p>5 Q. So how did you want to change that</p> <p>6 paragraph?</p> <p>7 A. I don't remember.</p> <p>8 Q. Why did you want to change that</p> <p>9 paragraph?</p> <p>10 A. I don't remember.</p> <p>11 Q. Do you see above that on December 1st</p> <p>12 a few days after your e-mail it appears Mike</p> <p>13 responded to you?</p> <p>14 A. Yeah.</p> <p>15 Q. Do you recall whether you ended up</p> <p>16 having further discussions with either Mike or</p> <p>17 Rick concerning the annual trust letter?</p> <p>18 A. You know I hope I did. I don't</p> <p>19 remember.</p> <p>20 Q. Why do you hope that you did?</p> <p>21 A. Well, if it corrects a misstatement I</p> <p>22 would hope that they corrected that.</p> <p>23 Q. Let's look at the next year's letter</p> <p>24 that was sent a little under a month after your</p> <p>25 e-mail. It is Plaintiffs' Exhibit 5 previously</p>

<p style="text-align: right;">Page 290</p> <p>1 L. Eber</p> <p>2 marked.</p> <p>3 Do you have that in front of you?</p> <p>4 A. Yes.</p> <p>5 Q. And comparing Exhibit 5 against</p> <p>6 Exhibit 4, it appears that the paragraph that you</p> <p>7 had asked to change was simply deleted in the</p> <p>8 December 2013 letter?</p> <p>9 A. Yes.</p> <p>10 Q. So no correction of the fact was made?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 Q. Is that right?</p> <p>13 A. Looks like that.</p> <p>14 Q. To your knowledge, did any of the</p> <p>15 co-trustees or anyone on their behalf ever inform</p> <p>16 either Audrey Hays or Sally Kleeberg or Sally</p> <p>17 Kleeberg's children about the misstatement that</p> <p>18 had been made in the December 18, 2012 letter?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A. I don't know.</p> <p>21 Q. Did you ever discuss the transfer of</p> <p>22 Eber Metro to Alexbay with any of Sally Kleeberg,</p> <p>23 Audrey Hays, Dan Kleeberg or Lisa Stein?</p> <p>24 A. I talked to my sister Sally.</p> <p>25 Q. When was that?</p>	<p style="text-align: right;">Page 292</p> <p>1 L. Eber</p> <p>2 say much when you talked to her?</p> <p>3 A. It depends. She was very personable</p> <p>4 and had a lot of friends and she just didn't say</p> <p>5 much.</p> <p>6 Q. Where did this conversation occur?</p> <p>7 A. In a restaurant where we had dinner.</p> <p>8 Q. Where was that?</p> <p>9 A. In Buffalo.</p> <p>10 Q. Do you recall the restaurant?</p> <p>11 A. 800.</p> <p>12 Q. Is this a restaurant that you</p> <p>13 frequently went to?</p> <p>14 A. She would go to.</p> <p>15 Q. Did she live in the Buffalo area?</p> <p>16 A. Yes.</p> <p>17 Q. Was anyone else present for this</p> <p>18 conversation?</p> <p>19 A. My wife was with me but she had</p> <p>20 excused herself to go to the bathroom and it was</p> <p>21 just the two of us.</p> <p>22 Q. By the time your wife came back the</p> <p>23 conversation was over?</p> <p>24 A. Yeah. It wasn't a long conversation.</p> <p>25 Q. And after that conversation, did you</p>
<p style="text-align: right;">Page 291</p> <p>1 L. Eber</p> <p>2 A. Could have been a year before she died</p> <p>3 or so.</p> <p>4 Q. Approximately, when was that?</p> <p>5 A. It was in the summer when she died in</p> <p>6 what, '14 or '15. Probably a year before I told</p> <p>7 her about that.</p> <p>8 Q. What did you tell her specifically?</p> <p>9 A. That the company had lost a lot of</p> <p>10 money and I had lent in a lot of money and that I</p> <p>11 took it over to protect my interest.</p> <p>12 Q. How did she respond?</p> <p>13 A. She didn't -- I don't think she liked</p> <p>14 it very much.</p> <p>15 Q. Why do you say that?</p> <p>16 A. She didn't respond very much.</p> <p>17 Q. Do you recall anything that she said?</p> <p>18 A. No.</p> <p>19 Q. Do you recall --</p> <p>20 A. She --</p> <p>21 Q. Go ahead.</p> <p>22 A. She didn't say much.</p> <p>23 Q. Was she sick at that time?</p> <p>24 A. No.</p> <p>25 Q. Was she typically someone that didn't</p>	<p style="text-align: right;">Page 293</p> <p>1 L. Eber</p> <p>2 make any effort to memorialize the fact what you</p> <p>3 had told her?</p> <p>4 A. I don't remember that.</p> <p>5 Q. Why didn't you?</p> <p>6 MR. RAMSEY: Form.</p> <p>7 MR. CALIHAN: Form.</p> <p>8 A. I have been absorbed by keeping the</p> <p>9 company going and seeing that it's viable and not</p> <p>10 going into liquidation.</p> <p>11 Q. Was there any benefit to either of the</p> <p>12 other trust beneficiaries at the time Audrey Hays</p> <p>13 or Sally Kleeberg from your transferring Eber</p> <p>14 Metro to Alexbay?</p> <p>15 MR. RAMSEY: Form.</p> <p>16 A. Benefit?</p> <p>17 Q. Did it benefit them in any way?</p> <p>18 A. I don't know. I don't have an answer</p> <p>19 for you.</p> <p>20 Q. Did you think about whether it</p> <p>21 benefitted them at the time that you did it?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A. I thought about -- no. I thought</p> <p>24 about keeping Connecticut viable and not facing</p> <p>25 liquidation. That's what my thinking was about.</p>

<p style="text-align: right;">Page 294</p> <p>1 L. Eber</p> <p>2 Q. So you weren't thinking about whether</p> <p>3 that transaction would have any positive or</p> <p>4 negative impact on the shareholders of the</p> <p>5 company; is that right?</p> <p>6 A. I was thinking about keeping the</p> <p>7 company alive and if I didn't do it there wouldn't</p> <p>8 be a business today.</p> <p>9 Q. So that was a yes that you were not</p> <p>10 thinking about the shareholders?</p> <p>11 MR. CALIHAN: Objection to form.</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. I didn't say that.</p> <p>14 Q. So walk me through your reasoning.</p> <p>15 In what way did you consider the</p> <p>16 shareholders' interests benefitted or harmed by</p> <p>17 the Alexbay acquisition of Eber Metro?</p> <p>18 A. I had asked the shareholders to</p> <p>19 invest. They chose not to. I proceeded on my</p> <p>20 own. I spent millions of dollars, lent. Paid</p> <p>21 legal fees and I did not -- I was absorbed with</p> <p>22 keeping the company alive.</p> <p>23 Q. Did you -- sorry, go ahead.</p> <p>24 A. That's it.</p> <p>25 Q. Did you describe your request for</p>	<p style="text-align: right;">Page 296</p> <p>1 L. Eber</p> <p>2 proud of what you did?</p> <p>3 A. Yes.</p> <p>4 MR. RAMSEY: Form.</p> <p>5 Q. Why?</p> <p>6 A. I did what I had to do to keep -- you</p> <p>7 know, it is all speculation. So I did what I had</p> <p>8 to do to survive to keep the company alive.</p> <p>9 Q. Your father wanted the company to</p> <p>10 remain with the full family; right?</p> <p>11 A. Well, he took the family -- he took</p> <p>12 the family really out of it and set up trusts</p> <p>13 outside of the family that had control of</p> <p>14 everything.</p> <p>15 Q. So he wanted the business to remain</p> <p>16 with the trust?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 Q. Correct?</p> <p>19 A. He just took family members out of it.</p> <p>20 So I don't know what he did. I have no idea what</p> <p>21 his thinking was. I never saw his will or</p> <p>22 anything. I was handed a copy of his estate when</p> <p>23 I first met Mr. Gumaer. I knew from nothing.</p> <p>24 Q. Just to wrap this up, did you ever</p> <p>25 discuss the transfer of Eber Metro to Alexbay with</p>
<p style="text-align: right;">Page 295</p> <p>1 L. Eber</p> <p>2 money to either Audrey Hays or Sally Kleeberg as</p> <p>3 an investment opportunity?</p> <p>4 A. Originally I did and in original</p> <p>5 letters I asked for them to invest.</p> <p>6 Q. And did you make it sound like a very</p> <p>7 good investment?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A. You see what it said. The letters</p> <p>10 speak for themselves.</p> <p>11 Q. Was the family business important to</p> <p>12 your sister Sally?</p> <p>13 A. Yes. I believe so.</p> <p>14 Q. So wasn't it important for you to make</p> <p>15 clear to her that you intended to take the company</p> <p>16 for yourself and away from the rest of the family</p> <p>17 if she didn't invest?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A. I didn't feel -- I asked her to</p> <p>20 invest. I am not going to say to her what I was</p> <p>21 going to do or not do. I did what I had to do to</p> <p>22 keep the company alive to make -- so we can clean</p> <p>23 up our statement and get a bank loan. Otherwise,</p> <p>24 there wouldn't be a company.</p> <p>25 Q. Do you think your father would be</p>	<p style="text-align: right;">Page 297</p> <p>1 L. Eber</p> <p>2 anyone else in your family besides Sally Kleeberg</p> <p>3 and Wendy Eber?</p> <p>4 A. No. There wouldn't be anyone else to</p> <p>5 discuss it with.</p> <p>6 MR. BROOK: I have no further</p> <p>7 questions.</p> <p>8 MR. CALIHAN: I have no questions at</p> <p>9 this time.</p> <p>10 MR. RAMSEY: We are done.</p> <p>11 THE VIDEOGRAPHER: This marks the end</p> <p>12 of media unit number six in the videotaped</p> <p>13 deposition of Lester Eber. We are going off</p> <p>14 the record. The time is 5:08.</p> <p>15 (Time Noted: 5:08 p.m.)</p> <p>16</p> <p>17</p> <p>18 LESTER EBER</p> <p>19</p> <p>20 Subscribed and sworn to before me</p> <p>21 this day of , 2019.</p> <p>22</p> <p>23</p> <p>24 (Notary Public) My Commission Expires:</p> <p>25</p>

75 (Pages 294 - 297)

<p style="text-align: right;">Page 298</p> <p>1 2 C E R T I F I C A T E 3 STATE OF NEW YORK) : ss. 4 COUNTY OF NEW YORK) 5 I, LYNNE D. METZ, a Shorthand Reporter 6 and a Notary Public within and for the State of 7 New York, do hereby certify that the foregoing 8 deposition of LESTER EBER was taken before me on 9 the 24th day of January, 2019; 10 That the said witness was duly sworn 11 before the commencement of his testimony; that the 12 said testimony was taken stenographically by me 13 and then transcribed. 14 I further certify that I am not 15 related by blood or marriage to any of the parties 16 to this action or interested directly or 17 indirectly in the matter in controversy; nor am I 18 in the employ of any of the counsel in this 19 action. 20 IN WITNESS WHEREOF, I have hereunto 21 set my hand this 8th day of February, 2019. 22 23 24  25 LYNNE D. METZ</p>	<p style="text-align: right;">Page 300</p> <p>1 2 Consulting Agreement Bates numbers EB 3 00000702 through 711 4 Exhibit 28, a series of W-2s that were 64 5 produced by the parties in discovery 6 Bates numbers EB 00021420 through 428 7 Exhibit 29, a series of letters that 71 8 appears to be written on Lester Eber's 9 letterhead bearing Bates stamps EB 695 10 through 701 11 Exhibit 30, a document entitled Amended 99 12 and Restated Promissory Note bearing 13 Bates numbers EB 00031310 through 311 14 Exhibit 31, a copy of two printouts 110 15 made on October 1, 2016 from the 16 Connecticut Department of State 17 concerning the business Alexbay LLC 18 Exhibit 32, a letter and some 128 19 attachments that are dated July 12, 20 2017 from Rita Nischal of Canandaigua 21 National Bank and Trust to Lester Eber 22 Exhibit 33, a order in the Surrogates 128 23 Court of The State of New York in 24 Monroe County dated June 1, 2017 signed 25 by Surrogate Judge John M. Owens</p>
<p style="text-align: right;">Page 299</p> <p>1 2 January 24, 2019 3 4 I N D E X 5 WITNESS EXAMINATION BY PAGE 6 LESTER EBER MR. BROOK 7 7 8 ----- INFORMATION REQUESTS ----- 9 DIRECTIONS (DI): 141, 161 10 INSERT: None 11 RULINGS (RL): None 12 REQUESTS (RQ): 75, 181 13 CERTIFIED (CE): None 14 MOTIONS (MO): None 15 16 E X H I B I T S 17 Plaintiffs' Exhibits For ID 18 Exhibit 25, a document entitled 15 19 Unanimous Written Consent of the Board 20 of Directors of Eber Brothers Wine and 21 Liquor Corporation Bates numbered EB 22 00001338 through 1340 23 Exhibit 26, an article found online on 37 24 casshilldevelopment.com 25 Exhibit 27, a document entitled 61</p>	<p style="text-align: right;">Page 301</p> <p>1 2 Exhibit 34, a letter and attachments 132 3 that was produced yesterday by 4 Canandaigua National Bank Bates stamped 5 CNB-PL 0010 through 12 6 Exhibit 35, a e-mail and attachment 137 7 dated October 31, 2018 sent by Paul 8 Keneally with multiple recipients 9 CNB-PL 0001 to 2 10 Exhibit 36, a printout of a table with 141 11 some notes entitled Residuary TUW Allen 12 Eber Proposed Distribution of 13 Securities 14 Exhibit 37, a e-mail dated September 141 15 15, 2017 sent by Jim Vazzana to R. 16 Nischal at CNB, Canandaigua National 17 Bank, with yourself as one of the 18 people copied on it Bates stamped 19 CNB-PL 0005 20 Exhibit 38, a letter dated October 11, 144 21 2017 on letterhead for Woods Oviatt 22 Gilman LLP addressed to Jim Vazzana and 23 me 24 Exhibit 39, a four-page letter dated 148 25 November 5, 2018 by Paul Keneally</p>

<p style="text-align: right;">Page 302</p> <p>1 2 addressed to Magistrate Judge Katherine 3 Parker 4 Exhibit 40, a e-mail dated June 2, 2017 151 5 from Jim Vazzana to Lorisa LaRocca 6 Bates number CNB-PL 0022 7 Exhibit 41, an e-mail dated August 18, 151 8 2017 from Jim Vazzana to Lorisa LaRocca 9 Exhibit 42, a copy of a letter dated 155 10 October 10, 2018 from Audrey Hays to 11 Wendy Eber and Lester Eber 12 Exhibit 43, a series of documents that 167 13 were produced together Bates range EB 14 00001166 through 1173 15 Exhibit 44, a copy of a summons and 191 16 complaint dated February 21, 2012 17 bearing Bates number KSH 00070 through 18 83 19 Exhibit 45, a document bearing the 209 20 caption of Alexbay versus Eber Brothers 21 and it states it is the affidavit of 22 Lester Eber bearing Bates numbers EB 23 00001059 through 1063 24 Exhibit 46, Affidavit of Lester Eber 218 25 bearing Bates numbers EB 00017525</p>	<p style="text-align: right;">Page 304</p> <p>1 ERRATA SHEET 2 VERITEXT LEGAL SOLUTIONS 3 330 OLD COUNTRY ROAD 4 MINEOLA, NEW YORK 11501 5 516-608-2400 6 NAME OF CASE: Kleeberg, et al v. Eber, et al 7 NAME OF DEPONENT: Lester Eber 8 DATE OF DEPOSITION: January 24, 2019 9 PAGE LINE(S) CHANGE REASON 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Lester Eber</p> <p>SUBSCRIBED AND SWORN TO BEFORE ME THIS ___ DAY OF _____, 20__.</p> <p>(NOTARY PUBLIC) MY COMMISSION EXPIRES:</p>
<p style="text-align: right;">Page 303</p> <p>1 2 through 544 3 Exhibit 47, a two-page letter on the 253 4 letterhead for Elliot W. Gumaer, Jr. 5 Dated January 2, 2001 Bates stamped 6 January 8, 2001 and Bates number EB 7 00001556 to 57 8 Exhibit 48, an e-mail from Mike Gumaer 257 9 to Wendy Eber and Lester Eber dated 10 October 29, 2013 bearing Bates number 11 GUM 000023 12 Exhibit 49, a letter on Eber Brothers 264 13 Wine and Liquor Corp. Letterhead signed 14 by Lester Eber Bates number KSH 00004 15 dated April 2, 2010 16 Exhibit 50, a chain of two e-mails 280 17 possible another e-mail that appears to 18 have been redacted Bates number EB 19 00031202 20 Exhibit 51, an e-mail from Mike Gumaer 286 21 to Lester Eber copying Wendy Eber dated 22 December 1, 2013 bearing Bates numbers 23 EB 00031106 24 25 ***Exhibits retained by counsel.***</p>	